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Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Report of the Secretary-General

Summary

The Economic and Social Council, by its resolution 1745 (LIV) of 16 May 1973, invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. The Council, by resolution 1995/57 of 28 July 1995, recommended that the quinquennial reports of the Secretary-General, like the report submitted to the Council in 1995, should continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. By the same resolution, the Council requested the Secretary-General, in preparing the sixth quinquennial report, to draw on all available data, including current criminological research. The present, sixth quinquennial report reviews the use of and trends in capital punishment, including the implementation of the safeguards, during the period 1994-1998.

In accordance with Council resolutions 1745 (LIV) and 1990/51 of 24 July 1990, the report will be submitted to the Commission on Crime Prevention and Criminal Justice at its ninth session and, in pursuance of Commission on Human Rights resolution 1999/61 of 28 April 1999, will be before that Commission at its fifty-sixth session.

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Introduction

1. The present report, which is the sixth quinquennial report on capital punishment, covers the period 1994-1998 and reviews the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.[1] It has been prepared in pursuance of Economic and Social Council resolutions 1754 (LIV) of 16 May 1973 and 1995/57 of 28 July 1995.

2. The report will be submitted to the Commission on Crime Prevention and Criminal Justice at its ninth session, in accordance with Council resolutions 1745 (LIV) and 1990/51 of 24 July 1990, and Council decision 1999/262 of 28 July 1999, which established the Commission's agenda. In pursuance of Commission on Human Rights resolution 1999/61 of 28 April 1999, the report will also be submitted to the Commission at its fifty-sixth session.

3. To facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the application of the death penalty and the implementation of the safeguards, a number of steps were taken. Under the auspices of the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention, a questionnaire was designed, and the sixth survey was conducted on the two issues combined. By means of a note verbale dated 6 December 1999, the Secretary-General invited Governments to provide the requisite, basic information in that regard. By an official communication dated 24 February 2000, the Secretary-General also invited the comments of relevant intergovernmental organizations, non-governmental organizations, United Nations entities and the network of institutes. So as to invite a high response rate, Member States were urged by the Secretariat to cooperate in the survey endeavour at the sixth, seventh and eighth sessions of the Ad Hoc Committee on the Elaboration of a Convention on Transnational Organized Crime, held at Vienna in December 1999, and January and February 2000. The Centre for International Crime Prevention contracted, as a consultant, Professor Roger Hood, Director of the Centre for Criminological Research at Oxford University, a leading authority on the death penalty,[2] to advise on preparation of the report.

4. In its resolution 1745 (LIV), the Economic and Social Council invited the Secretary-General to submit to it periodic updated and analytical reports on the question of capital punishment at five-year intervals starting from 1975. The first quinquennial report, submitted by the Secretary-General in 1975, covered the period 1969-1973 (E/5616 and Add.1 and Corr.1 and 2). The second quinquennial report, prepared in 1980 and covering the period 1974-1978 (E/1980/9 and Corr.1 and 2, Add.1 and Corr.1, and Add.2 and 3), was also submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in accordance with Economic and Social Council decision 1980/142 of 2 May 1980. The third quinquennial report (E/1985/43 and Corr.1), covering the period 1979 to 1983, was considered by the Council in 1985 and by the Seventh United Nations Congress. The fourth quinquennial report (E/1990/38/ Rev.1 and Corr.1 and Add.1), covering the period 1984-1988, was considered by the Council at its first and second regular sessions of 1990, and by the Eighth United Nations Congress.

5. In pursuance of section X of Council resolution 1986/10 of 21 May 1986, the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). In that report, which was based on replies from 74 countries, it was noted that the review justified the concern expressed by the Human Rights Committee that inadequate progress had been made towards abolishing or limiting the application of the death penalty. The Economic and Social Council, in its resolution 1989/64 of 24 May 1989, recommended that quinquennial reports on capital punishment should henceforth cover the implementation of the safeguards as well as the use of capital punishment.

6. The fifth quinquennial report, covering the period 1989-1993, was therefore the first such report to deal not only with the question of capital punishment but also the question of the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/1995/78 and Add.1 and Add.1/Corr.1). It was considered by the Council at its substantive session of 1995 and in a revised version, which included a further 12 replies from Governments that had not been available previously, by the Commission on Crime Prevention and Criminal Justice at its fifth session (E/CN.15/1996/19).

7. The Economic and Social Council, its resolutions 1745 (LIV), 1990/51 and 1995/57, invited Member States to provide the Secretary-General with the information requested in order to facilitate his efforts to

gather comprehensive, timely and accurate information about the implementation of the safeguards and on the use of and trends in capital punishment during the period 1994-1998. In the preparation of the report and in accordance with the request of the Council, the Secretary-General was to draw on all available data, including current criminological research, and to invite the comments of specialized agencies, intergovernmental organizations and non-governmental organizations in consultative status with the Council. The network of associate and affiliate institutes was also contacted in that regard.

8. The present report provides a technical analysis of the responses of Governments to the survey. It also makes comparisons over time with reference to the previous quinquennial reports of the Secretary-General and to all available supplementary data. Reference is made to the work of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, and to the annual, supplementary reports submitted to the Commission on Human Rights in 1998 and 1999 (E/CN.4/1998/82 and Corr.1 and E/CN.4/1999/52 and Corr.1 and Add.1). Replies received after the preparation of the present report will appear in an addendum.

I. Background and scope of the report

9. All States were invited to participate in the sixth quinquennial report on capital punishment by means of a detailed methodological questionnaire that was designed by the Centre for International Crime Prevention. For the first time, question items were framed separately for abolitionist countries, for countries that did not impose the death penalty for ordinary offences or de facto abolitionist countries, and for retentionist countries, and included reference both to the use of capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. All States were asked about: the extent to which they kept abreast of the international debate on the death penalty, developments in other countries and in the United Nations; research, information and public awareness concerning the use of the death penalty; and the extent to which they provided, or required, technical cooperation on issues relating to capital punishment. Information was specifically requested by gender and age, and, for the first time, the ethnic origin and religious affiliation of persons sentenced to death or executed in countries that had retained the death penalty.

10. Information was received from 45 countries: 16 Western European and other States (Austria, Belgium, Cyprus, Denmark, Finland, Germany, Iceland, Italy, Liechtenstein, New Zealand, Norway, Spain, Sweden, Switzerland, Turkey and the United Kingdom of Great Britain and Northern Ireland); 10 in Eastern Europe (Armenia, Croatia, Estonia, Hungary, Kazakhstan, Lithuania, Poland, Slovakia, Slovenia and The former Yugoslav Republic of Macedonia); 5 in Africa (the Comoros, Djibouti, Eritrea,[3] Mozambique and Togo); 7 from Latin American and Caribbean States (Argentina, Barbados, Brazil, Ecuador, El Salvador, Mexico and Peru); 2 in the Middle East (Bahrain and Lebanon); 4 in the Asian and Pacific region (Japan, Myanmar, Thailand and Fiji); and 1 in North America (Canada). Comments and information were also received from the following: Amnesty International, the Council of Europe, the International Committee of the Red Cross, the Inter-Parliamentary Union, the Organization of American States and the Organization for Security and Cooperation in Europe (see sect. IV below).

11. It has been standard practice in all of the United Nations quinquennial surveys and annual reports over the past 25 years to classify the use and application by States of capital punishment; that is, whether States do or do not retain the death penalty and, if they do, whether or not it has been enforced within the preceding 10 years. The categories used are as follows:

(a) Abolitionist for all crimes, whether in peacetime or in wartime;

(b) Abolitionist for ordinary crimes, meaning that the death penalty has been abolished for all ordinary offences committed in a time of peace, such as those contained in a country's criminal code or those that are recognized in common law (e.g., murder, rape, robbery with violence, possessing drugs for sale etc.). In these countries, the death penalty is only retained for exceptional circumstances, such as those that may apply in time of war for military offences, or for crimes against the State, such as treason or armed insurrection;

(c) Abolitionist de facto, meaning that, while the death penalty is retained in the statutes and death sentences may continue to be imposed, they have not been enforced by execution for such a long period of time—10 years at least—that capital punishment can be regarded as inactive. This does not mean, however, that executions cannot resume;

(d) Retentionist, meaning that death sentences have been imposed and executions have taken place within the past 10 years.

There have been cases, such as in the annual, supplementary reports submitted to the Commission on Human Rights, where the first two categories have been amalgamated into a single, "abolitionist" category. For the purposes of continuity with the previous five quinquennial surveys, and for pertinency within this specialized field, the above-mentioned categories have been maintained and no such amalgamation is made.

12. It was the practice in the first four quinquennial reports to begin by indicating the status of the death penalty in the countries that had replied at the end, rather than at the beginning, of the quinquennium. Of the 49 States that responded to the first survey on capital punishment (1969-1973), 23 were abolitionist and 26 retentionist. Of the 74 States responding to the second survey (1974-1978), 26 were abolitionist (16 for all crimes and 10 for ordinary crimes), 47 were retentionist and 1 was divided on the issue (i.e., it had the death penalty in some jurisdictions but not others). The third survey (1979-1983) elicited 64 responses, 25 from abolitionist States (20 for all crimes and 5 for ordinary crimes) and 39 from retentionist States. Fifty-five States responded to the fourth survey (1984-1988): 32 were abolitionist (26 for all crimes and 6 for ordinary crimes) and 23 retentionist, of which 5 could be considered abolitionist de facto (having had no executions for 10 or more years). A further 34 countries provided information on their death penalty status when responding in 1988 to the United Nations survey on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Thus, 89 countries responded to one or other of those surveys.

13. The fifth survey, covering the period 1989-1993, at first yielded responses relating to 57 countries, although subsequently the number increased to 69; 66 were from governmental sources and 3 from non-governmental organizations. At that time, 43 of the countries and territories mentioned were abolitionist (32 for all crimes, including 5 countries that had emerged as new States during the quinquennium, and 11 for ordinary crimes), while 26 (including 4 new States) were retentionist. Nine of these (including one new State) were considered abolitionist de facto.

14. Only 45 Governments responded to the sixth survey, a smaller number than in any previous survey; almost three quarters of those are abolitionist. The comparatively low response rate may increase over time. It may also be the case that a number of States which have been completely abolitionist for some time may not have regarded the sixth survey as relevant to their circumstances. Indeed, a few communicated this to the Secretary-General. Moreover, 26 countries had recently—in 1998 or 1999—sent information on law and practice relating to the death penalty for the annual, supplementary reports submitted to the Commission on Human Rights. Only 13 of these countries responded to the sixth survey. It may be that annual requests for information have led some Governments to believe that if they have recently provided information, they do not need to do so again so soon afterwards. This is to be regretted because the quinquennial reports seek a much wider range of, and more detailed, information than that sought by the Secretary-General for his annual report to the Commission on Human Rights.

15. In the first three quinquennial surveys, the proportion of retentionist countries among those that replied was between 53 and 64 per cent. In the fourth and fifth surveys, retentionist countries accounted for a lower proportion of the respondents: 42 per cent and 38 per cent, respectively. This, in part, reflects the increasing number of countries that have become abolitionist. Indeed, in the fifth survey, only 17 of 103 countries or territories that remained retentionist at the end of the reporting period (31 December 1993) provided information. On the other hand, 62 per cent of the 69 countries and territories listed as abolitionist (completely, or for ordinary offences) and 43 per cent of the 21 abolitionist de facto countries replied to the questionnaire.

16. In this sixth survey, the majority of countries were abolitionist: 33 (73 per cent) of the 45 that replied. Nevertheless, only 39 per cent of all abolitionist countries did reply. Of the 71 States that retained and enforced capital punishment at the end of 1999, only 6 (8.5 per cent) returned the questionnaire. Of the 38 de facto abolitionist countries, 6 (16 per cent) replied. Thus, comparisons among surveys are vitiated by the fact that respondents to one questionnaire do not always respond to the next. Indeed, 40 countries that responded to the fifth survey in 1994 did not send a response to the sixth survey, about 40 per cent of them retentionist (including abolitionist de facto) States. From another perspective, one third of the States that replied to the sixth survey did not respond to the fifth. In addition, there was a great deal of variability in the amount of information that countries provided, as noted in the present report.

17. It has proved useful to analyse the flow of responses to the quinquennial surveys of the Secretary-General since the first was launched in 1975, always bearing in mind that many new States have come into existence during this period. Among the countries and territories that could have replied to all six surveys covering the 30-year period between 1969 and 1998, 46 did not reply to any of them.[4] Only 9 of the 46 replied to the requests of the Secretary-General for information for the report on the implementation of the safeguards published in 1988 or the annual, supplementary reports submitted to the Commission on Human Rights in 1998 and 1999.

18. Only 6 of the 46 non-responding States had become abolitionist by the end of 1999,[5] 15 had progressed at various stages to abolitionist de facto status[6] and the majority, 25, had remained retentionist throughout the period.[7]

19. Only 59 countries and territories, roughly one third of those which could have replied to all six quinquennial surveys, replied to at least three of them. The majority of them (71 per cent) were abolitionist by the end of 1999. Thirty-seven States, about 1 in 5 of all States in a position to do so, replied to four or more surveys. Again, a high proportion of them were already or about to become abolitionist. Japan and Thailand were the only retentionist countries to reply to all six quinquennial surveys, although Bahrain, the Philippines, Singapore and Tunisia each responded on four occasions.

20. The retentionist countries have been most reticent in responding to the quinquennial surveys, among them some that have most frequently applied the death penalty. Their reluctance to provide information to the Secretary-General on a regular basis has become a matter of concern, has been a worrisome feature of the quinquennial surveys and analytical reports over time and now undermines the value of the quinquennial exercise as a whole. It is from those retentionist States, many of which do not publish any official statistics relating to the use of capital punishment, that information, through a United Nations survey, is most needed.

21. For this reason, as mandated and so as to obtain a truer picture of the status and situation with respect to application of the death penalty and safeguards relating thereto throughout the world, the sixth quinquennial report of the Secretary-General, more so than in the past, relies on information derived from a variety of other sources. In particular, it was necessary to draw upon external sources in order to ascertain the number of death sentences imposed and executions carried out around the world during the period under review. Of particular value in this regard have been the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the reports of, and submissions to, the Human Rights Committee; the reports of the Secretary-General to the Commission on Human Rights; a report from the Organization for Security and Cooperation in Europe; reports submitted to the Parliamentary Assembly of the Council of Europe; and publications of the Council of Europe. Useful data have also been culled from national statistics, reports from Governments, academic sources, and information provided by non-governmental organizations, in particular, Amnesty International. More recent data for 1999 and 2000, referred to in the present report, are intended to supplement the information provided.

II. Changes in the status of the death penalty, 1994-1998

22. The responses received and the information gathered from other sources have been analysed according to the pattern established for the fifth survey which covered the years 1989-1993. Namely, countries have been arranged according to their death penalty status at the beginning of the quinquennium in January 1994 so that changes in law and practice during the subsequent five years, and for 1999 where information is available, can be readily perceived and clearly assessed.

A. Countries that had abolished the death penalty for all crimes by the beginning of 1994

23. At the beginning of 1994, 56 countries had abolished the death penalty for all crimes (see table 1 below, notes a/ and q/). They include 17 of the 45 countries which responded to the sixth survey: Austria, Croatia, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Liechtenstein, Mozambique, New Zealand, Norway, Slovakia, Slovenia, Sweden, Switzerland and The former Yugoslav Republic of Macedonia. Only one of these, Ecuador, stated that there had been proposals for reinstituting the death penalty and this was because of the increase in cases of kidnapping and other serious offences. In its reply, it also stated that the death penalty might have served on occasion as a deterrent, with the effect of

slowing down the increase in crime. In that country, the main problem was unemployment with all its consequences, namely poverty, crime and ignorance, and that to focus on anything else was superfluous.

24. With the exception of one, the Gambia, none of the remaining 39 totally abolitionist countries have, as far as is known, considered reverting to the use of capital punishment. The Gambia however, which was abolitionist for all crimes in 1994, reinstated capital punishment through a decree issued by the Armed Forces Provisional Ruling Council in 1995, after a military coup d'état. Since, however, no executions have taken place since the coup and the last execution was in 1981, the Gambia can be categorized as abolitionist de facto.

25. As the quinquennial period began, 56 countries and territories had embraced total abolition. At the end of the quinquennium, all but one of them had remained abolitionist.

B. Countries that had abolished the death penalty for ordinary crimes at the beginning of 1994

26. At the beginning of 1994, 14 countries had abolished the death penalty for ordinary offences but not for special offences, whether committed in times of war or peace.

27. Of the above, 11 replied to the sixth survey: Argentina, Brazil, Canada, Cyprus, El Salvador, Fiji, Italy, Mexico, Peru, Spain, and the United Kingdom of Great Britain and Northern Ireland. Two of these countries, Italy and Spain, abolished the death penalty for all offences during 1994, as noted in the fifth survey (E/CN.15/1996/19). A further two, Canada and the United Kingdom, did so in 1998. In Canada, the Minister of Defence introduced a Bill to amend the National Defence Act, the effect of which was to replace the death penalty by life imprisonment as the maximum punishment for certain offences under military law committed in time of war.[8] During the passage of the 1998 Crime and Disorder Act through the United Kingdom Parliament, an amendment was introduced by a backbench Member of Parliament, which removed from the statute book the last two ancient and unused remnants of capital punishment, namely, treason and piracy. Later in that year, the death penalty for military offences of all kinds was abolished by a clause inserted into the Human Rights Act 1998. In addition, Cyprus, whose criminal code is modelled on English criminal law, also abolished the death penalty for treason and piracy, in 1999. Cyprus, however, has yet to abolish capital punishment for military offences.

28. Among those States that did not reply to the sixth survey, 1, Nepal, also became totally abolitionist. Thus, in all, 5 countries which were in the "abolitionist for ordinary offences only" group became abolitionist for all offences. Article 12 of the Constitution of the Kingdom of Nepal, which came into effect in 1990, states that no law should be made which provides capital punishment. Existing laws had to be reviewed within one year to ensure their compliance with this and other provisions. It was not until 1997 that the Supreme Court of Nepal ruled that the death penalty provisions which had been retained for espionage and for attacking the Royal Family (after it had been abolished for all other offences in 1990) were inoperative, thus confirming that the Constitution prohibited capital punishment.

29. Most of the countries that have remained abolitionist for ordinary crimes only regard themselves as abolitionist de facto for all crimes, even if no moves have been made to eliminate the death penalty for all military offences in time of foreign war. This is because executions in such circumstances are regarded as a very remote contingency. Indeed, these circumstances have not arisen for many years. This attitude is prevalent in countries that replied to the survey (Argentina, Brazil, Cyprus, El Salvador, Fiji and Mexico) and probably also in the two that did not reply (Israel and Malta). El Salvador, for example, stated that, under article 28 of the Constitution of the Republic, the death penalty may only be imposed in those cases specified by military laws during a state of international war, and that in practice, this amounted to a prohibition of the death penalty as it is only imposed, as an exception in the aforementioned case. Peru, which expanded the potential scope of the death penalty in 1993 through a constitutional reform for two offences against the State, namely, treason and terrorism carried out within the country,[9] reported that no persons had been executed under these provisions.

30. Thus, at the beginning of 1994, 14 countries were abolitionist for ordinary offences only. Five became abolitionist for all offences, leaving 9 that did not change their status during the quinquennium.

C. Retentionist countries at the beginning of 1994

31. As the quinquennium began, 94 countries could be classified as retentionist and a further 30 retained capital punishment but were considered abolitionist de facto on the grounds that no person had been judicially executed for at least 10 years.

1. Countries that were abolitionist de facto at the beginning of 1994

32. Six of the responding countries had been considered abolitionist de facto at the beginning of 1994 because there had been no executions for at least 10 years: Belgium (1950), Bahrain (1977), the Comoros (since independence in 1975), Djibouti (since independence in 1977), Togo (1979) and Turkey (1984).

(a) Countries that abolished the death penalty

33. Between 1994 and 1998, Belgium and Djibouti became abolitionist for all crimes. The reformed Code pénal and the Code de procédure pénale came into force in Djibouti in January 1995. Only one person had previously been sentenced to death, for a terrorist offence, and his sentence had been commuted to life imprisonment in 1993. Djibouti attributed the decision to abolish capital punishment to a combination of public opinion, political will and empirical evidence. Belgium, a prime example of an abolitionist de facto country where the last execution had taken place in 1950, finally abolished the death penalty in July 1996.

34. One other country that did not respond to the sixth survey moved from abolitionist de facto to abolitionist for ordinary crimes: Bosnia and Herzegovina. In September 1997, the Human Rights Chamber of the Human Rights Commission (established under the General Framework Agreement for Peace in Bosnia and Herzegovina) ruled that the death penalty could not be imposed for crimes committed in peacetime. In all, 3 abolitionist de facto countries became abolitionist.

(b) Countries that remained abolitionist de facto

35. Nineteen countries remained abolitionist de facto from the beginning of 1994 until the end of 1998. Two of them replied to the survey: Togo and Turkey. It appeared from Togo's response that it remained firmly committed to its de facto status, for no death sentences had been passed in the period 1994-1998. Turkish courts, however, had continued to hand down death sentences: 19 for ordinary offences and 11 for offences against the State. As regards the remaining 17 countries that did not reply to the sixth survey, no death sentences were reported from other sources during this period in respect of 13 of them (Bhutan, Brunei Darussalam, the Central African Republic, the Congo, Grenada, Madagascar, Maldives, Nauru, the Niger, Samoa, Senegal, Suriname and Tonga), but death sentences continued to be imposed in 4 (Côte d'Ivoire, Mali, Papua New Guinea and Sri Lanka).

(c) Countries that resumed executions

36. During the quinquennium, however, 7 abolitionist de facto countries resumed executions, 2 of which, the Comoros and Bahrain, replied to the sixth survey. In 1997, the Comoros carried out its first executions since gaining independence in 1975. Two adult males convicted of murder were executed, one in public by firing squad. After 19 years of virtual abolition, Bahrain also reverted to capital punishment when, in 1996, an adult male was executed for the premeditated murder of a police officer.

37. Five other countries (none of which replied to the current survey) recommenced executions between 1994 and 1998, making 7 in all. When an adult male was executed in Trinidad and Tobago in July 1994 while appeal procedures were still pending (see E/CN.4/1995/61, para. 382), it was the first death sentence to be carried out in the country in 15 years. Guatemala carried out its first executions in 13 years in 1996, when two adult males were put to death for the rape and murder of a child. Also in 1996, the Bahamas hanged an adult male for murder, the first person to be executed since 1984. Burundi executed six adults in 1997 for participation in the massacres of Tutsi civilians in 1993, the first executions carried out since 1981. In 1998, after a period of 13 years, Saint Kitts and Nevis executed an adult male for murder.

38. In 1999, these countries were joined by the Philippines when an adult male was executed for the rape of his stepchild, the first execution in 23 years. Although executions have yet to take place in Sri Lanka, the Government appears to be contemplating the resumption of capital punishment.

(d) Summary

39. In summary, 30 countries were considered to be abolitionist de facto at the beginning of 1994. By the end of 1998, 2 had become abolitionist for all offences, 1 had

become abolitionist for ordinary offences and 7 had resumed executions, thereby becoming retentionist. This means that 20 of the 30 had remained abolitionist de facto throughout the period. The number fell to 19 in 1999 when the Philippines also resumed executions. Thus, 8 countries reverted to capital punishment. The action of these countries shows that the mere absence of executions, even over a long period of time, cannot guarantee abolitionist de facto status.

40. This evidence, taken together, suggests that the concept of abolitionist de facto, based purely on the criterion of the number of years without executions, may no longer have the credibility at one time ascribed to it. Now that so many countries have become truly abolitionist, it seems no longer necessary or politically advantageous to treat abolitionist de facto States as if they were a subcategory of the abolitionist group. Rather, until they have clearly indicated their intention to remove capital punishment from their legislation and to subscribe to international conventions which ban its reintroduction, they are best regarded as a subcategory of retentionist States, albeit ones that appear to be moving in the abolitionist direction.

2. Countries that retained and enforced capital punishment at the beginning of 1994

41. From a variety of sources it can be established that, at the beginning of 1994, 94 countries and territories retained the death penalty in their criminal law and had enforced it through executions within the previous decade. Only 11 of them replied to the sixth survey: Armenia, Barbados, Eritrea, Estonia, Japan, Kazakhstan, Lithuania, Lebanon, Myanmar, Poland and Thailand. Of these, all but Japan, Kazakhstan, Lebanon and Thailand had ceased to carry out executions by the end of 1998. There were no plans to abolish capital punishment in these four countries, but Kazakhstan reported that it had reduced the number of offences, both ordinary and special, for which the death penalty could be imposed.

(a) Countries that became abolitionist

42. Poland, in 1997, and Estonia and Lithuania, both in 1998, abolished capital punishment completely. The last execution in Estonia took place in 1991, although death sentences continued to be imposed for aggravated murder (13 from 1994 to 1998). The Estonian Parliament totally abolished the death penalty in May 1998 following ratification in March 1998 of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms[10] hereinafter referred to as the European Convention on Human Rights). In its response to the questionnaire, Estonia stated that abolition had been brought about by a combination of political will and the influence of United Nations policy or instruments. Lithuania has not executed anyone since July 1995, when a moratorium on executions was established with a view to abolishing the death penalty. In December 1998, the Constitutional Court held that the provision for the death penalty in the Lithuanian Criminal Code was unconstitutional. As a consequence, the Criminal Code was amended on 21 December 1998, so as to abolish capital punishment for all criminal offences. The Lithuanian authorities also attributed this transformation to political will. Between April and September 1998, when the new Polish Penal Code replaced the death penalty by life imprisonment as the most serious penal sanction, no executions have taken place. In its reply, Poland mentioned that, between 1994 and 1998, there had been initiatives to reinstate the death penalty. Like Estonia and Lithuania, it said that abolition had been achieved by a combination of political will, official inquiry and the influence of United Nations policy.

43. In addition to Estonia, Lithuania and Poland, 6 countries that did not reply to the sixth survey also moved from being retentionist to abolitionist for all offences during the period 1994-1998, namely, Azerbaijan, Bulgaria, Georgia, Mauritius, the Republic of Moldova and South Africa. In June 1995, the Constitutional Court of South Africa ruled that the death penalty was unconstitutional, but it was unclear whether this applied to the crime of treason in wartime. This was clarified two years later when the Criminal Law Amendment Act removed all references to capital punishment from the statute book, including treason in wartime. The reformist Government in Mauritius passed, by a large majority, an Abolition of the Death Penalty Bill 1995. The President of Mauritius refused to sign it but it was successfully reintroduced and became law without the need for Presidential assent. At the end of 1995, the Parliament of the Republic of Moldova voted unanimously to eliminate the death penalty from the Penal Code (although it still exists in the separatist province of Transdniestra). In November 1997, a proposal made by the President of Georgia to replace the death penalty with life imprisonment for all offences was opposed by only one member of the Georgian Parliament. The complete abolition of the death penalty by the Parliament of

Azerbaijan in February 1998, following a moratorium on executions since June 1993, was also the result of a Bill introduced by the President of the Republic in support of human rights. Similarly, the death penalty was abolished completely in Bulgaria in December 1998 (nine years after the last execution), following a Presidential initiative that was taken up by the Legal Committee for the National Assembly.

44. These 9 former retentionist States were joined by 4 more countries and territories in 1999, 1 of which became abolitionist for ordinary offences (Latvia) and 3 of which became totally abolitionist (Turkmenistan, Ukraine and East Timor), making a total of 13 countries and territories that moved from retentionist to abolitionist between the beginning of 1994 and the end of 1999. Although the Latvian Criminal Code of 1998 had retained the death penalty, it was abolished in effect for ordinary offences in peacetime by Latvia's ratification of Protocol No. 6 to the European Convention on Human Rights. In addition, the dependent territory of Bermuda also abolished the death penalty.

45. The change in policy and practice in Turkmenistan has been remarkable. Although no official figures were published, it was thought that well over 100 people were executed each year in 1994, 1995 and 1996. The new Criminal Code adopted in 1997 provided the death penalty for as many as 17 offences yet, on 1 January 1999, the President announced a moratorium on executions and by December had abolished the death penalty completely by Presidential Decree.[11] Even though Ukraine agreed, from the date of accession to the Council of Europe in November 1995, to an immediate moratorium on executions and to ratify Protocol No. 6 to the European Convention within three years, executions continued to be carried out on a considerable scale: 180 persons were executed from the beginning of 1996 until the moratorium was eventually put into effect on 11 March 1997. Attempts by the Ukrainian Cabinet to abolish the death penalty through a provision of the new Criminal Code failed to gain the support of the Ukrainian Supreme Council (Parliament). In December 1999, however, the Supreme Court of Ukraine ruled that all provisions of the Criminal Code relating to the death penalty were incompatible with articles 27 and 28 of the Ukrainian Constitution.[12] Finally, in February 2000, the Ukrainian Parliament removed provisions on the death penalty from the Ukrainian Criminal Code, Code of Prosecutions Procedure and the Penitentiary Code. East Timor, on attaining independence from Indonesia in 1999, abolished the death penalty completely.

46. Of the 13 countries that were retentionist in 1994, all had become abolitionist and all but one for all crimes, by the end of 1999.

(b) Countries that became or claim to be abolitionist de facto

47. Classification of the death penalty status in Eritrea and Armenia was difficult for purposes of the present report. The future of capital punishment in Eritrea remains uncertain until the new penal code comes into force, but no death sentences appear to have been imposed since 1994 or executions carried out since 1989. Armenia reported that no one had been executed since 1991, although death sentences continued to be passed. The reply from Armenia indicated that the Government intended to abolish the death penalty. According to non-governmental sources, a bill was first introduced in 1997 with the support of the President who had been responsible for the establishment of a moratorium on executions since 1991, pending the introduction of a new Criminal Code that would remove the death penalty from the list of prescribed punishments. At the end of 1999, the Code had yet to be approved by the Armenian Parliament, although the de facto moratorium on executions remained in force.[13] In its reply, Armenia classified itself as abolitionist de facto.

48. According to the convention of 10 years without executions, Barbados became abolitionist de facto in 1994. Five other countries that did not reply to the sixth survey also became abolitionist de facto: the West African State of Guinea and the Caribbean States of Antigua and Barbuda, Belize, Dominica and Jamaica. In all 6 of these countries, however, death sentences were imposed during the period under review and in several of them imprisoned persons on capital conviction remained on death row. The Government of Jamaica indicated that it may follow Trinidad and Tobago and resume executions. Myanmar stated in reply to the survey that it was an abolitionist de facto country. A response was not given to the question item requesting the date of the last execution, but there is an indication that it had taken place in 1989. Eight other countries which did not reply to the survey also became abolitionist de facto by the end of 1999, providing that the absence of reports of judicial executions since 1989 are correct: Benin, Burkina Faso, Gabon, the Lao People's Democratic Republic, Mauritania, Qatar, Swaziland and Yugoslavia. Several of them, however, like Myanmar

(which provided no statistics), continued to impose the death sentence and, for the reasons given in paragraphs 39 and 40 above, it is uncertain whether these States have renounced the use of the death penalty.

49. Albania appears to be moving rapidly towards formal abolition of the death penalty. Although death sentences have continued to be imposed (there were reports of at least two in 1999), the last execution took place in 1995. In June 1996, the President of the Parliament announced, in a signed declaration in preparation for Albania's entry into the Council of Europe, that Albania would put into place a moratorium on executions until such time as the death penalty was abolished. In December 1999, the Constitutional Court ruled that the death penalty was unconstitutional, but the matter has still to be formally resolved by the Albanian Legislature. Until this has happened, Albania should be regarded as abolitionist de facto.

50. Despite the reservations noted above, the fact that 18 countries that were retentionist at the beginning of 1994 had become abolitionist de facto by the end of 1999 is of considerable significance in relation to a decrease in the number of countries where executions take place on a regular basis.

(c) Countries that remained retentionist

51. Thus, there were 63 countries and territories that did not change their death penalty status. Six of them are, however, believed to have carried out no executions between 1994 and 1999, although they have continued to pass death sentences, namely, Chad, Chile, Ghana, Kenya, Malawi and Morocco. In July 1997, the President of Malawi commuted all death sentences. He had not signed any execution warrants since taking up office in 1994 and stated that he would nor in future do so.

52. In the Russian Federation, a moratorium on executions was put into effect by Presidential decree in August 1996, although executions continued in Chechnya under Islamic law in 1997 and 1998. Upon accession to the Council of Europe in 1996, the Russian Federation undertook to abolish the death penalty and ratify Protocol No. 6 to the European Convention on Human Rights within three years. By the end of 1999, however, it had neither abolished the death penalty in law nor ratified Protocol No. 6. Capital punishment was, in effect, banned by a ruling of the Constitutional Court in February 1999, which required that it could only be imposed when all citizens in all of the Federation's 89 republics, regions and territories had been granted the right to jury trial. At present, this is only available in 9 of the republics. In June 1999, according to information provided by the Organization for Security and Cooperation in Europe, the President of the Russian Federation signed a decree commuting the sentences of all convicts on death row to either life sentences or terms of 25 years. Thus, there is good reason to believe that, within a short period of time, the Russian Federation will become an abolitionist State.

53. The last reported executions to be carried out in Tunisia were in 1991. Since then, it appears that no death sentences have been imposed and that no one has been executed. Tunisia may therefore be progressing towards abolitionist de facto status. Nevertheless, as stated above, in the absence of governmental assurances, the lack of executions cannot be taken as an indicator that the Government is now committed to moving towards the abolition of capital punishment *de jure*.

54. Thus, 55 of the countries that have remained retentionist have carried out executions during the period 1994-1998 but are not known to have given any indication that they intend in the near future to abolish the death penalty.

D. Status of the death penalty in 1999: summary of changes since the beginning of 1994

55. Having charted the changes that have taken place since 1994, it is helpful to classify the countries according to their status at the end of 1999. Viewed in this way, it is possible to see how many countries have changed their death penalty status, and in which way since the survey period began in 1994. This is shown in table 1, both for all countries and for those that replied to the sixth survey.

56. The major conclusion to be drawn from the sixth quinquennial survey is that the rate at which countries have embraced abolition has been sustained. During the period 1989-1993, 22 countries abolished capital punishment, 20 of them for all crimes in peacetime or in wartime: a pace of change described in the report on the fifth survey as quite remarkable. In the five years between 1994 and 1998, another 17[14] countries eliminated the death penalty, 16 for all crimes and 1 for ordinary crimes in peacetime. Moreover, in 1999, 3 more countries became abolitionist for all crimes[15] and another became abolitionist for ordinary offences,[16] making a total of

Table 1
Death penalty status at the end of 1999

	Number of countries and territories	
	Total (194)	*Replies (45)*
A. Complete abolitionist	74	26
Have remained totally abolitionist	55[a]	17[b]
Have become totally abolitionist:		
(a) From abolitionist for ordinary crimes	5[c]	4[d]
(b) From ADF abolitionist de facto	2[e]	2[e]
(c) From retentionist	12[f]	3[g]
Total	19	9
B. Abolitionist for ordinary crimes	11	7
Have remained abolitionist for ordinary crimes	9[h]	7[i]
Have become abolitionist for ordinary crimes:		
(a) From abolitionist	0	0
(b) From abolitionist de facto	1[j]	0
(c) From retentionist	1[k]	0
Total	2	0
C. Abolitionist de facto	38	6
Have remained abolitionist de facto	19[l]	2
With no death sentences reported	14[m]	1[n]
With death sentences reported	5[o]	1[p]
Have become abolitionist de facto:		
From abolitionist	1[q]	0
From abolitionist for ordinary crimes	0	0
From retentionist	18[r]	4
With no death sentences reported	5[s]	1[t]
With death sentences reported	13[u]	3[v]
Total	19	4
D. Retentionist	71	6
Have remained retentionist with executions	55[w]	4[x]
Have ceased executions since 1994 but not death sentences	7[y]	0
Have ceased death sentences and executions since 1994	1[z]	0
Have reverted from abolitionist de facto status to retentionist by resuming executions	8[aa]	2[bb]

[a] Andorra, Angola, Australia, Austria, Bolivia, Cambodia, Cape Verde, Colombia, Costa Rica, Croatia, the Czech Republic, Denmark, the Dominican Republic, Ecuador, Finland, France, Germany, Greece, Guinea-Bissau, Haiti, the Holy See, Honduras, Hungary, Iceland, Ireland, Kiribati, Liechtenstein, Luxembourg, the Marshall Islands, Micronesia (Federated States of), Monaco, Mozambique, Namibia, the Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Portugal, Romania, San Marino, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, Solomon Islands, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Tuvalu, Uruguay, Vanuatu and Venezuela.

[b] Austria, Denmark, Ecuador, Croatia, Finland, Germany, Hungary, Iceland, Liechtenstein, Mozambique, New Zealand, Norway, Slovakia, Slovenia, Sweden, Switzerland and The former Yugoslav Republic of Macedonia.

[c] Canada, Italy, Nepal, Spain and the United Kingdom of Great Britain and Northern Ireland.

[d] Canada, Italy, Spain and the United Kingdom of Great Britain and Northern Ireland.

[e] Belgium and Djibouti.

[f] Azerbaijan, Bulgaria, Estonia, Georgia, Lithuania, Mauritius, Poland, the Republic of Moldova, South Africa and, in 1999, Turkmenistan and Ukraine, and East Timor (on attaining independence).

[g] Estonia, Lithuania and Poland.

[h] Argentina, Brazil, Cyprus, El Salvador, Fiji, Israel, Malta, Mexico and Peru.

[i] Argentina, Brazil, Cyprus, El Salvador, Fiji, Mexico and Peru.

[j] Bosnia and Herzegovina.

[k] Latvia (in 1999).

[l] Bhutan, Brunei Darussalam, the Central African Republic, the Congo, Côte d Ivoire, Grenada, Madagascar, Maldives, Mali, Nauru, the Niger, Papua New Guinea, Samoa, Senegal, Sri Lanka, Suriname, Togo, Tonga and Turkey.

[m] Bhutan, Brunei Darussalam, the Central African Republic, the Congo, Grenada, Madagascar, Maldives, Nauru, the Niger, Samoa, Senegal, Suriname, Togo and Tonga.

[n] Togo.

[o] Côte d'Ivoire, Mali, Papua New Guinea, Sri Lanka and Turkey.

[p] Turkey.

[q] The Gambia.

[r] Albania, Antigua and Barbuda, Armenia (where the last execution was in 1991 and which classified itself as abolitionist de facto on the grounds that a Bill was before Parliament in 1999 to abolish the death penalty), Barbados, Belize, Benin, Burkina Faso, Dominica, Eritrea, Gabon, Guinea, Jamaica, the Lao People's Democratic Republic, Mauritania, Myanmar, Qatar, Swaziland and Yugoslavia (in 1999).

[s] Eritrea, Gabon, the Lao Poeple's Democratic Republic, Qatar and Swaziland.

[t] Eritrea.

[u] Antigua and Barbuda, Barbados, Belize, Dominica, Guinea, Jamaica and, in 1999, Albania, Armenia, Benin, Burkina Faso, Mauritania, Myanmar and Yugoslavia.

[v] Armenia, Barbados and Myanmar.

[w] Afghanistan, Algeria, Bangladesh, Belarus, Botswana, Cameroon, China, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Egypt, Equatorial Guinea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia, the Libyan Arab Jamahiriya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Palestine, the Republic of Korea, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, the Sudan, the Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, Uganda, the United Arab Emirates, the United Republic of Tanzania, the United States of America, Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe.

[x] Japan, Kazakhstan, Lebanon and Thailand.

[y] Chad, Chile, Ghana, Kenya, Malawi, Morocco and the Russian Federation.

[z] Tunisia.

[aa] Bahamas, Bahrain, Burundi, the Comoros, Guatemala, the Philippines, Saint Kitts and Nevis and Trinidad and Tobago.

[bb] Bahrain and the Comoros.

21 countries. Given that fewer new democratic States have come into existence in the latter period and that there is a smaller pool of retentionist countries and territories which may be assumed to be more resistant to change, the continued movement towards abolition throughout the world has been impressive.

57. Although 4 countries reintroduced the death penalty in the quinquennium 1989-1993, no abolitionist de facto States resumed executions. From 1994 to 1998, in the United States of America, the states of Kansas (1994) and New York (1995) reintroduced capital punishment, as did the Gambia in 1995 after a period of two years of total abolition. In addition, 8 countries ceased to be abolitionist de facto by resuming executions. This is a worrying trend for those who support the abolitionist movement. An up-to-date list of abolitionist and retentionist countries is contained in annex I to the present report.

III. Enforcement of the death penalty

58. The small number of replies received from countries that were retentionist at the beginning of 1994 could provide only the sparsest indication of the global use of capital punishment over the five years from 1994 to 1998. Only 6 of the 10 retentionist countries in which death sentences had been imposed provided statistics.[17] Only 6 retentionist States reported executions: one in Bahrain, two in the Comoros, six in Lebanon, five in Thailand and 24 in Japan. The Government of Kazakhstan stated that executions had taken place but was unable to provide the number since statistics were not available. All of the death sentences and executions were reported to have involved persons aged 18 years or over at the time of the offence. Two adult females were sentenced to death in Japan and four in Thailand, and one adult female was executed in Japan. Only in Thailand and Turkey were persons sentenced to death for crimes other than murder: 22 (20 adult males and 2 adult females) in Thailand for drug-related offences, and 11 adults in Turkey for offences against the State. None of these death sentences were carried out. Where information was provided on the ethnicity and religious affiliation of the individuals executed, the responding States indicated that they were of the predominant ethnic group: in Bahrain, a Muslim; in the Comoros, a Muslim; and in Thailand, all were Asian Buddhists. Lebanon indicated that the two persons executed were of the "other" category. This suggested that, in future quinquennial surveys, these factors would need further elaboration.

59. Table 2 below indicates, as far as can be ascertained from the number of executions reported annually by Amnesty International, the countries or territories in which 20 or more executions were carried out in the five-year period 1994-1998. It also shows the estimated rate of executions per one million of the population. These figures in many cases are likely to underestimate substantially the true number of persons judicially executed and, of course, they do not include the often much larger number of persons in some of these countries or territories who are put to death extrajudicially. Furthermore, the average rate of executions shown per one million population over the five-year period will be lower than the true figure if executions have been carried out but not reported. Indeed, some countries that should be listed have not been included because of the difficulties involved in gathering information on the number of persons executed each year.

60. As can been seen from table 2, the largest number of reported executions has been carried out in China, followed by the Islamic Republic of Iran, Saudi Arabia, the United States of America, Nigeria and Singapore. Substantial numbers of executions also took place in Ukraine, Turkmenistan and the Russian Federation before moratoria were put into effect. It should also be noted that all of the executions in the Democratic Republic of the Congo took place in only one of the five years under review (1998).

61. Raw numbers can, of course, be misleading when countries vary so greatly in the size of their populations. Thus, China (2.01 executions per one million population) did not have the highest rate of executions per capita amongst the countries listed in table 2. Turkmenistan executed seven times as many per capita (14.92 per one million),[18] which makes its achievement of total abolition in 1999 all the more remarkable. Among those countries which remain retentionist, Singapore had by far the highest rate of executions (13.73), followed by Saudi Arabia (4.65), Sierra Leone (2.84), Kyrgyzstan (2.80), Jordan (2.12) and China (2.01). Only 3 retentionist countries executed more persons than the United States of America, yet that country had one of the lowest rates of executions (0.20) per one million population. As table 2 shows, this can also be misleading because two thirds of the executions in the United States of America between 1994

Table 2
Countries and territories reported to have executed at least 20 persons in the period 1994-1998 and estimated annual rate per one million population[a, b]

Country or territory	*Total executions 1994-1998*	*Estimated annual rate per one million population*
Afghanistan	34	0.36
Belarus	103	1.96
China	12 338	2.01
Democratic Republic of the Congo	100	0.43
Egypt	132	0.43
Iran (Islamic Republic of)	505	1.59
Japan	24	0.04
Jordan	55	2.12
Kazakhstan	148	1.74
Kyrgyzstan	70	2.80
Libyan Arab Jamahiriya	31	1.17
Nigeria	248	0.41
Pakistan	34	0.05
Republic of Korea	57	0.25
Russian Federation (ceased executions in 1996)	161	0.22
Rwanda	23	0.58
Saudi Arabia	465	4.65
Sierra Leone	71	2.84
Singapore	206	13.73
Taiwan Province of China	121	1.13
Turkmenistan (ceased executions in 1997)	373	14.92
Ukraine (ceased executions in 1997)	389	1.55
United States of America	274	0.20
Texas	93	0.94
Virginia	37	1.09
South Carolina	21	0.84
Missouri	16	0.78
Florida	11	0.15
Viet Nam	145	0.38
Yemen	88	1.10
Zimbabwe	22	0.37

[a] Calculated on the basis of the average annual number of executions. Where there were no reports, it was assumed that the number was zero. Population figures from Keesing's Worldwide, LLC, *The Annual Register: A Record of World Events 1998* (Washington, D.C., 1999).

[b] Data derived from reports issued by Amnesty International.

and 1998 took place in only 6 of the 38 states with the death penalty. One third of the executions occurred in Texas, and 13.5 per cent in Virginia which had the highest rate in relation to population, equivalent to more than one half of China's execution rate.

62. A large proportion of the executions contributing to the high rate of executions in Singapore were for drug-related offences. Individuals were also known to have been executed for drug trafficking in China, Egypt, the Islamic Republic of Iran, Malaysia and Saudi Arabia. Convicted rapists were executed in China, Jordan and Somalia (for the rape of a minor), Saudi Arabia and the United Arab Emirates. In the Islamic Republic of Iran, persons were reportedly executed for adultery, sodomy and sexual relations outside marriage. Armed robbers were executed in China, Nigeria, Malaysia and, in 1999, the Democratic Republic of the Congo. In a few countries, persons were executed for economic offences, including embezzlement and corruption by public officials, most notably in China but also in Viet Nam. Indeed, China executed persons for a wide range of offences, especially during its crackdown on crime in 1996, including persons convicted of publishing and selling obscene materials, smuggling forged money, tax-related offences, public order offences and trafficking in women and children.

63. Over the five-year period under review, the only figures available[19] suggest that an estimated 23,000 persons were sentenced to death and approximately 13,500 judicially executed. The annual number of death sentences fluctuated between 3,700 and 7,100, and the annual number of executions varied between approximately 1,600 and 4,200, largely because the reported numbers varied substantially from year to year in China, the incidence having increased in particular during the above-mentioned crackdown on crime in 1996.

64. In this regard, it should be recalled that the Economic and Social Council, in its resolution 1989/64, urged Member States to publish, for each category of offence for which the death penalty was authorized, and if possible on an annual basis, information about the use of the death penalty. That information was to include the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency had been granted. The sixth survey has shown once again how important it is for Member States to respond positively to that request.

IV. International developments

65. There have been important international developments in the United Nations, the Council of Europe and the European Union since the sixth quinquennium began. The General Assembly, the Economic and Social Council, the Commission on Crime Prevention and Criminal Justice and, in particular, the Commission on Human Rights have continually invited States that had not yet abolished the death penalty to consider the progressive restriction of the number of offences for which the death penalty may be imposed.

66. The Commission on Human Rights, by resolution 1997/12 of 3 April 1997, called upon all States which had not yet abolished the death penalty to consider suspending executions, with a view to completely abolishing the death penalty and called upon all States parties to the International Covenant on Civil and Political Rights that had not yet done so to consider acceding to or ratifying the Second Optional Protocol thereto,[20] aiming at the abolition of the death penalty. In that resolution, the Commission expressed its conviction that abolition of the death penalty contributed to the enhancement of human dignity and to the progressive development of human rights. Twenty-seven countries had voted in favour of the resolution, 11 were against and 14 abstained. Resolutions to the same effect were adopted by the Commission in 1998 and in 1999. By 1999, the number in favour of the resolution (Commission resolution 1999/61) had increased to 30, with 11 against and 12 abstentions. It should also be noted that the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries in July 1998, did not provide the death penalty for any of the serious crimes in the Statute (see A/CONF.183/9).

67. The Parliamentary Assembly of the Council of Europe has been particularly trenchant in its opposition to capital punishment. In resolution 1044 (1994) and recommendation 1246 (1994), the Assembly called upon all the Parliaments in the world which had not yet abolished the death penalty to do so promptly, following the example of the majority of Council of Europe member States. Furthermore, it averred that the death penalty had no legitimate place in the penal systems of modern civilized societies, and that its application might well be compared with torture and be seen as inhuman and degrading punishment within the meaning of article 3 of the European Convention on Human Rights. In this regard,

the Assembly made it a precondition that any country that wished to become a member of the Council of Europe should agree to implement an immediate moratorium on executions and then sign and ratify, within a set number of years, Protocol No. 6 to the European Convention.[21] This position (as the Council of Europe pointed out in its response to the sixth survey) was reaffirmed in Assembly resolution 1097 (1996) and again in resolution 1187 (1999), concerning a death-penalty-free Europe. This policy has proved to be a potent factor in persuading a number of new members from Eastern Europe, including the Russian Federation and Ukraine, to cease executions despite the internal political pressures they faced in complying with the demands of the moratorium. As a symbol of its commitment to the abolition of the death penalty and the promotion of respect for human rights, democracy and the rule of law, the Council of Europe published in 1999 a collection of texts by major European abolitionists.[22]

68. Similarly, the European Union has made the abolition of capital punishment a precondition for membership and, in 1998, it adopted the guidelines to European Union policy towards third countries on the death penalty. The guidelines state that the objectives of the European Union are to work towards the abolition of the death penalty as a strongly held policy view agreed by all European Union member States. They stressed that the death penalty has no legitimate place in the penal systems of modern civilized societies and that abolition of the death penalty contributes to human dignity and the progressive development of human rights. Many European States have adopted the policy of refusing to extradite persons to countries that retain the death penalty if there is a risk that it will be imposed.

69. In response to the Secretary-General's invitation for comment, the International Committee of the Red Cross (ICRC) stated that, in order to accomplish fully its mandate and to preserve and maintain the trust of its interlocutors, it is of utmost importance that ICRC act with neutrality, impartiality and discretion. Consequently, ICRC was of the view that it might not take position in the general debate on this controversial issue but rather it preferred to examine individual cases for appropriate action. The Organization for Security and Cooperation in Europe drew attention to the reports published by its Office for Democratic Institutions and Human Rights which have served as background material for the discussions held on this issue at its regular human dimension implementation meetings or review conferences. The Inter-Parliamentary Union noted that its statutory conference, held in Moscow in September 1998, called on all parliaments and their members to work effectively for the worldwide abolition of the death penalty or at least the establishment of a moratorium on executions pending the complete abolition of the death penalty. The Organization of American States (OAS) encompasses two principal human rights bodies, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which together are responsible for monitoring compliance by the member States of OAS with the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the various other inter-American human rights instruments. The mandate of the Inter-American Commission includes receiving petitions from persons and non-governmental entities concerning denunciations or complaints of violations of these instruments by member States, and conducting on-site investigations with their consent. The Inter-American Court of Human Rights considers cases on the interpretation and application of the American Convention on Human Rights in respect of those member States that have accepted the Court's jurisdiction. The Court also has the authority, at the request of member States, to issue advisory opinions concerning the interpretation of the American Convention or of other treaties concerning the protection of human rights in the American States. Two inter-American instruments of particular relevance to the sixth survey are the American Convention on Human Rights, specifically article 4 thereof, and the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Article 4, on the right to life, permits the death penalty, but subjects its imposition to certain restrictions. By way of example, States parties are prohibited from extending the death penalty to crimes to which it did not apply when each State party ratified the Convention. The Additional Protocol seeks to consolidate the practice of not applying the death penalty in the Americas, by abolishing capital punishment in States parties to the Protocol. The Inter-American Commission and the Inter-American Court have adopted several decisions addressing the death penalty that are of relevance. The Organization of American States viewed the case of *Haniff Hilaire versus the Republic of Trinidad and Tobago* as of particular importance. The case was referred by the Inter-American Commission to the Inter-American Court of Human Rights on 25 May 1999. The Commission had argued, *inter alia*, that the State was responsible for violations of the individual's right to life under article 4 of the Convention and of his right to humane treatment under

article 5 of the Convention, by sentencing him to death pursuant to a law that mandated capital punishment for the crime of murder in the country. The case is currently in the preliminary objection stage of proceedings before the Court, and judgements on the merits of the case are not anticipated until 2001, at the earliest (see also paras. 112-115 below).

70. Amnesty International stated that it opposes the death penalty as a violation of fundamental human rights, that is, the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. It considered that there is no criminological justification for the death penalty that would outweigh the human rights grounds for abolishing it. The argument that the death penalty is needed to deter crime has, it considered, become discredited by consistent lack of scientific evidence that it does so more effectively than other punishments. It stated that the death penalty negates the internationally accepted penal goal of rehabilitating the offender and that, at the beginning of a new millennium, the world had moved further towards universal abolition than ever before. Amnesty International called upon Governments and their citizens to examine the full facts surrounding the death penalty and the convincing arguments against its use.

71. By the beginning of 1994, 10 of the 39 responding States had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty. In addition, 9 other countries had also done so, making 19 in all. Since then, 11 of the responding, and 11 of the non-responding, States have ratified the Second Optional Protocol. Thus, by the end of 1999, 41 countries had acceded to this international instrument, affirming their commitment to the abolition of the death penalty. Three nations have signed the Second Optional Protocol, the most recent to do so being the United Kingdom in 1999. The list of countries together with the dates of their signature and ratification, can be found in table 6 of annex I to the present report.

72. With respect to the European Convention on Human Rights, 13 responding countries and 7 non-responding countries had, by the beginning of 1994, ratified Protocol No. 6, which provides for the abolition of the death penalty in peacetime. A further 6 responding and 9 non-responding countries ratified the Protocol between January 1994 and December 1999. In the same period, 2 responding and a further 5 non-responding States had signed but had yet to ratify the Protocol. Thus, by the end of 1999, as many as 35 European countries had ratified this instrument, committing themselves to permanent abolition of the death penalty in peacetime, and 7 others had signed it (see annex I, table 6).

73. During the period 1994-1999, 3 countries ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, namely, Brazil in 1996, and Costa Rica and Ecuador in 1998 (see annex I, table 6).

V. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

74. The Economic and Social Council, by resolution 1996/15 of 23 July 1996, called upon Member States in which the death penalty had not been abolished to apply effectively the safeguards guaranteeing protection of the rights of those facing the death penalty (see annex II to the present report). The safeguards had been approved by the Council in resolution 1984/50, and specific steps for their implementation were recommended by the Council in its resolution 1989/64.

75. The safeguards comprise the basic guarantees to be respected in criminal justice proceedings in order to ensure the rights of offenders charged with a capital offence. They state, *inter alia*, that capital punishment may be imposed only for the most serious crimes. They establish the right to benefit from lighter penalties under certain conditions and the mandatory right (with sufficient time for the preparation of a defence) to appeal and to seek clemency or pardon. Exemptions from capital punishment are laid down for persons below 18 years of age at the time of the commission of the offence, and for pregnant women, new mothers and persons who are or have become insane or are suffering from mental retardation or extremely limited mental competence. Evidential requirements are stipulated in relation to findings of guilt and the competency of courts in order to ensure a fair trial and to leave no room for an alternative explanation of the facts. Defendants are to receive adequate assistance of counsel above and beyond that afforded in non-capital cases, and those who do not sufficiently understand the language used in court are to be fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court. Finally, there is a humanitarian obligation to ensure that when capital punishment is carried out, both the period of detention under sentence of death and the method of execution

should keep to a minimum the suffering of prisoners and avoid any exacerbation of such suffering.

76. Apart from Armenia, Eritrea and Myanmar, which did not answer any questions relating to safeguards (presumably because they regarded them as irrelevant to an abolitionist de facto country), the other 9 respondent retentionist countries and territories reported that they were aware of the safeguards and that they considered they were being observed during the period 1994-1998. Mexico stated that it observed all the safeguards in relation to military offences committed in time of war. Both Japan and Thailand reported that there had been difficulties in observing the safeguards, the former stating that it was impossible to answer yes or no because, in Japan, some of the safeguards were observed and some of them were not. The reasons given were that the legislation did not prohibit the execution of the death penalty while in the middle of pardon proceedings and that a mandatory appeal system had not been adopted. In Thailand, difficulties were said to be connected with the expertise available, facilities, financial resources and legislation. In one official's opinion, Thailand was in need of technical advisory services to enable the safeguards to be observed more effectively in that country.

77. Since few retentionist States participated in the sixth survey, it was not possible to provide the kind of detailed information on the observance of safeguards that was contained in the fifth quinquennial report (E/1995/78, annex III)[23] and in previous reports. The present section of the sixth report has therefore been written largely on the basis of the Secretary-General's mandate to draw upon all other available sources of information.

A. First safeguard

78. For the sixth survey, States were invited to list specific legal definitions of offences for which capital punishment could be imposed, according to whether the capital offences were considered "ordinary" or "special". Ordinary offences included crimes against the person, crimes against property, drug-related offences and other offences (to be specified). Special offences included crimes against the State, military offences and other offences (to be specified).[24] Together with the information available from other sources, it is possible to give some indication of the extent to which crimes subject to the death penalty meet the criteria set out in the first safeguard. It should be borne in mind that some States may retain the death penalty in their criminal codes for offences that are rarely prosecuted, for which persons are even more rarely tried and hardly ever, if at all, executed.

79. As noted in the report on the fifth survey, the definition of the most serious crimes may vary in different social, cultural, religious and political contexts (E/1995/78, para. 54). However, the meaning of intentional crimes and of lethal or other extremely grave consequences is intended to imply that the offences should be life-threatening, in the sense that this is a very likely consequence of the action. In its resolution 1999/61, the Commission on Human Rights, in line with the view expressed by its Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1999/39, para. 63), urged all States that still maintained the death penalty to ensure that it is not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience. Clearly, the use in the safeguard of the amorphous phrase "extremely grave consequences" has left it open to wide interpretation by a number of countries.

80. Persons have been executed for a wide range of offences since the beginning of 1994. The majority of retentionist countries maintain the death penalty in their criminal codes, in fact, for a far wider range of offences than criminal homicide. While former Soviet republics such as Kazakhstan that have yet to abolish the death penalty have taken action to reduce the number of capital crimes,[25] many retentionist countries have exhibited a tendency in the opposite direction. They have increased the range of crimes for which capital punishment may be imposed, rather than follow the expressed United Nations policy of progressively restricting the number of offences.

81. In 1985, a United Nations survey of penalties for drug trafficking revealed that the death penalty could be imposed in 22 countries and territories for that type of offence.[26] By 1995, the number had risen to at least 26 and, by the end of 1998, to at least 34. With the exception of Cuba, the Democratic Republic of the Congo, Guyana and the United States of America (Federal Law), these countries and territories are in the Middle East, North Africa or the Asian and Pacific region.[27] In a few of these countries and territories, the death penalty can be imposed for possession of quite small amounts of the illegal drug with intent to supply. For example, in 1998, Singapore made the death penalty mandatory for trafficking in more than 250 grams of crystal methamphetamine.[28] In contrast, in the Federal Law of the United States of America, the death penalty under the Violent Crime Control Act of 1994

has been reserved for those involved in large-scale drugs offences as part of a "continuing criminal enterprise".

82. Another 25 countries, at a minimum, retain the death penalty for sexual offences, mostly for rape, especially aggravated rapes such as the rape of a child. In 1997, Pakistan extended the death penalty to apply to gang rape.[29] Homosexual acts with violence (homosexual rape) is a capital offence in Cuba (E/CN.4/1998/82, annex). The laws of some States, however, are even wider ranging. In the Islamic Republic of Iran, a death sentence has been imposed on a woman for reportedly engaging in sexual relations outside marriage (E/CN.4/1999/39/Add.1, para. 103). It can also be imposed in the Sudan for recidivist prostitution, illicit sex and conviction for committing a third homosexual act.[30]

83. No fewer than 8 States provide the death penalty for kidnapping.[31] In 1996, kidnapping and trafficking in women and children was made a capital offence in Bangladesh.[32] A year earlier, the Guatemalan Congress approved the extension of the death penalty to anyone convicted of kidnapping, including accomplices who threaten to kill victims of kidnapping (E/CN.4/1996/4 and Corr.1, para. 210).

84. The number of countries that have the death penalty for armed robbery has increased, and is now at least 12.[33] Since the death penalty for certain economic offences has been abolished in most of the States that were formerly part of the Union of Soviet Socialist Republics, including the Russian Federation, there are probably now no more than 11 countries that retain it for offences such as aggravated theft, smuggling, speculation, fraud and embezzlement by public officials.[34]

85. It appears that many, but not all, retentionist States maintain the death penalty for military offences, and in some countries it can be imposed for various offences committed against the State in peacetime, such as terrorism, sabotage, undermining national security and treason. For example, Japan provided the following list of offences: leading an insurrection; inducement of foreign aggression; assisting an enemy; arson to an inhabited structure; destruction by explosives; damage to an inhabited structure by means of flooding; and use of explosives. Apart from several of the former Soviet Socialist republics, there is little indication that there has been any reduction in the number of retentionist countries that have capital offences of this kind; if anything, the reverse is probably true.

86. As far as is known, religious dissent in the form of blasphemy or apostasy remains a capital offence in the Islamic Republic of Iran, the Libyan Arab Jamahiriya, Pakistan and the Sudan. Furthermore, there are several countries where the number of capital crimes remains relatively high: in particular, China, Iraq, the Philippines, Cuba, Saudi Arabia, the Islamic Republic of Iran, the Sudan and Taiwan Province of China.*

87. Even though a mandatory death sentence can be later bypassed by commutation, a mandatory death penalty can make it difficult if not impossible for the court to take into account a variety of mitigating or extenuating circumstances that might remove a particular offence from the category of most serious crimes. Information on the extent to which capital punishment was mandatory for certain offences was again limited by the small number of retentionist States that replied to the sixth survey. In Barbados, the Comoros, Lebanon and Turkey, it was mandatory for capital murder but in Japan it was discretionary for all capital offences. It appears from Bahrain's reply that, although in general capital punishment is discretionary, it is mandatory for the premeditated murder of a police officer. In the Comoros, the death penalty is mandatory for offences against the State, treason and espionage; in Lebanon, for treason and collaboration with the enemy; and in Turkey, for offences against the State. Although Togo had not carried out any executions since 1979 and did not impose death sentences during the period under review, the position in law is still that capital punishment is mandatory for all offences for which it is provided in peacetime and wartime. How this was achieved, however, is unclear as the response of the Government of Togo, at the same time, indicated that no persons during this period had sought a pardon, a commutation of sentence or a reprieve against capital punishment. Several other countries and territories are known to maintain mandatory capital punishment for certain crimes, among them Grenada and Zimbabwe for murder; Kuwait, Malaysia, Taiwan Province of China and Thailand for various drug-related offences; Guatemala and the Philippines for the rape of a child; and in the latter country in several other defined circumstances (E/CN.4/1998/82 and Corr.1, chap. IV).

* The listing should be recognized as an inevitably incomplete catalogue of information drawn from a variety of sources at different periods of time.

B. Second safeguard

88. No information was forthcoming to suggest that any of the responding countries had applied the death penalty retroactively. From other sources, however, it appears that, under Decree No. 115 of 1994, Iraq introduced the death penalty in a form that could be applied retroactively to persons who had evaded military service for the third time. Bahrain, Barbados, Japan, Kazakhstan, Thailand and Turkey indicated that they would allow an alternative penalty to be imposed if the death penalty were subsequently abolished. Lebanon indicated to the contrary, that is, that it would not allow such alternative penalty.

C. Third safeguard

1. Persons below 18 years of age

89. Only one of the responding countries, Togo, had provision for imposing death sentences on persons under 18 years of age. The minimum age was set at 16 years but, as noted above, Togo did not impose one death sentence during the period of the survey.

90. Since the beginning of 1994, several countries have brought themselves into line with this safeguard, namely, Barbados, Yemen and Zimbabwe. In 1997, the power to impose suspended death sentences on persons under 18 years of age was abolished in China. There appear to be at least 14 countries which have ratified the Convention on the Rights of the Child[35] without reservation but, as far as is known, have not yet amended their laws to exclude the imposition of the death penalty on persons who committed the capital offence when under 18 years of age.[36] In addition, 25 states of the United States of America permit the execution of such persons, and 21 of them permit the execution of persons who were 16 years of age at the time that the offence was committed. The United States of America has not ratified the Convention on the Rights of the Child and, in June 1992 when it ratified the International Covenant on Civil and Political Rights, it entered a reservation with respect to article 6 (5) which bans the imposition of the death penalty on a person who committed the crime when below 18 years of age. During the period under review, it was reported that 4 countries had executed at least one person who was under the age of 18 at the time they committed the offence: the Islamic Republic of Iran, Nigeria, Pakistan and the United States of America.[37] Four were executed in the United States of America (two in Texas, one in Oklahoma and one in Virginia) and, in June 1999, there were 70 prisoners awaiting execution in 16 states for murders they committed when they were 16 or 17 years of age. One third of them were held in the state of Texas.[38] The United States has not responded to calls for it to embrace this safeguard and withdraw its reservation to the International Covenant.

91. In 1999, the Sub-Commission on the Promotion and Protection of Human Rights condemned unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of commission of the offence and called upon all States that retain the death penalty for juvenile offenders to commit themselves to abolishing the death penalty for such persons (E/CN.4/2000/2-E/CN.4/Sub.2/1999/54, chap. II, resolution 1999/4).

2. Maximum age

92. Only one of the retentionist States that responded to the sixth survey reported that there was a maximum age beyond which persons would not be executed, namely, Kazakhstan, where the maximum age is set at 65 years. A few other countries have exempted the elderly, among them, the Russian Federation (65 years), the Philippines and the Sudan (70 years), Guatemala and Mongolia (60 years). Executions of elderly persons were rarely reported, but an individual in prison and aged 70 years was known to have been executed in Japan in 1995.

3. Pregnant women or new mothers

93. Japan was the only retentionist country from which a reply was received in which the death penalty can be imposed on a pregnant individual, although "the execution shall be stayed". A minority of other countries reserve the power/authority to sentence pregnant women to death and to execute them at varying periods, ranging from months to several years, after delivery of the child. The replies from Barbados, Lebanon, Togo and Turkey indicated that there was no bar to a death sentence being imposed on a new mother.

94. There have been no executions of pregnant women recorded anywhere in the world in recent years, although it was reported that a death sentence was imposed in the Democratic Republic of the Congo in 1998 (E/CN.4/1999/39/Add.1, para. 68). It is not known whether any adult female with recently born children was executed in the period 1994-1998.

95. Females are completely exempted from capital punishment in a few countries, such as Albania, the

Russian Federation and Uzbekistan (since 1995), and in some others, such as Cuba, a female has never been executed. Death sentences were, however, imposed on adult females in Japan and Thailand and in several other retentionist countries. An adult female and her spouse were executed in Japan in 1997. In the United States of America, 50 adult females were on death row at the end of April 1999 and the execution of an adult female, by the State of Texas in 1998, was the first such execution in the country since 1984. Since then, another adult female has been executed in Texas.

4. The insane and persons suffering from mental retardation or extremely limited mental competence

96. Among the responding retentionist countries, only Togo indicated that the law would allow death sentences to be imposed on persons who were insane or suffering from mental retardation. Other sources suggest that most, if not all, other countries provide for a defence of insanity in capital cases. Moreover, as in Japan, if a person under sentence of death becomes insane, he or she will not be executed while in that mental state. Yet, in practice, whether or not persons who are mentally ill or who suffer from extremely limited mental competence escape the death penalty depends a great deal upon the availability of expert psychiatric testimony to use in their defence. Thus, it has been accepted by the Judicial Committee of the Privy Council in London that the shortage of qualified forensic psychiatrists in certain Caribbean countries has meant that the mental health of defendants in murder cases is not routinely assessed, either on behalf of the State or by independent psychiatrists for the defence.[39] This must also be the case in other regions where there is a shortage of such experts, especially when combined with a shortage of financial resources available to the defence to obtain an independent mental assessment.

97. Since the beginning of 1994, it has been claimed that at least 13 persons in prison who were diagnosed as mentally retarded to some degree have been executed in the United States of America, most recently in February 1998. The number executed each year, however, appears to have been in decline since the beginning of 1996. This may indicate that the growing opposition in the United States of America to the execution of the mentally retarded may have had a salutary effect.[40] It is now prohibited by 12 of the 38 retentionist states in that country.

D. Fourth safeguard

98. Respondent retentionist States replying to the sixth survey reported that they abided by the fourth safeguard, and that no cases of an innocent person being executed had come to light during the period 1994-1998. Yet, observation of this safeguard in any State which retains the death penalty is an aspiration rather than a reality in all cases. For example, the appeals procedure in the United States of America has led to a substantial number of persons being removed from death row. Thus, the average number of death sentences imposed in the five years from 1994 to 1998 was 300. During the same period, an average of 87 death sentences (not necessarily relating to the same persons) were overturned or removed by appeals courts; the conviction was quashed entirely on average 34 times each year.[41] Despite this, concerns have been regularly voiced in the United States that innocent persons remain under sentence of death and that some are eventually executed. In 1999, 8 persons on death row were exonerated and freed.[42] These concerns led early in 2000 to the introduction of a Senate Bill entitled "The Innocence Protection Act".[43]

99. There have also been reports during the period 1994-1998 from several other countries of persons being released from prison, sometimes after many years in custody, on the grounds of their innocence. These reports have come from Belize, China, Japan, Malawi, Malaysia, Pakistan, Papua New Guinea, the Philippines, Trinidad and Tobago, and Turkey (although the latter stated that this was not the case in its response to the survey). Furthermore, convictions that had resulted in executions have been posthumously overturned in the United Kingdom of Great Britain and Northern Ireland, Uzbekistan and the Russian Federation.[43]

100. If a relatively large number of legal and factual errors made at trials for capital offences are found by appeals courts in the United States of America, where the scope of capital punishment is narrowly drawn and the legal system is well developed, it may be the case that such errors will also occur in many of the other retentionist countries.

E. Fifth safeguard

101. All 9 States that responded to questions concerned with the various aspects of the fifth safeguard gave positive answers and confirmed that adequate legal assistance was available at all stages of the criminal process. Bahrain,

Barbados, the Comoros, Kazakhstan, Thailand and Turkey stated that provision of counsel was above and beyond that afforded in non-capital cases. For example, Bahrain stated that if the defendant was unable to retain a lawyer, the Government would assign one to him, at the expense of the Ministry of Justice, so as to provide him with legal advice at all stages of the proceedings. Japan, Lebanon and Togo stated that this was not, however, the practice. Governments were not asked specifically about the form of detention or imprisonment awaiting trial in capital cases, or about the facilities for interpretation or translation. Consideration should be given to investigating these matters in the next quinquennial survey.

102. Mexico drew attention to the Advisory Opinion of the Inter-American Court of Human Rights (OC-16/99 of 1 October 1999), which it had requested, concerning the right to information on consular assistance within the framework of guarantees of due legal process. The Opinion was concerned with the fact that foreign nationals had been executed in the United States of America, even though they were not informed when arrested of their right to consular assistance, contrary to article 36 of the Vienna Convention on Consular Relations, ratified by the United States of America in 1969. According to the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, this is also alleged to have occurred in Saudi Arabia (E/CN.4/1999/39/Add.1, para. 213).

103. During the period under review, allegations were made that death sentences had been imposed in several countries and territories following trials that did not conform to international standards. Many of these allegations concerned the trial of civilians and soldiers before special tribunals or military courts set up to deal with civil unrest. In this respect, the following countries have been cited by the Special Rapporteur on extrajudicial, summary or arbitrary executions or by the Human Rights Committee: Algeria, the Democratic Republic of the Congo, Egypt, Iraq, Kuwait, Nigeria, Pakistan and Sierra Leone.[44] Other concerns have focused on the powers given to Islamic courts to impose death sentences under a kind of summary jurisdiction (such as in Chechnya) and in Afghanistan where many of the judges are said to be virtually untrained in law (E/CN.4/1998/68, para. 85). In Somalia, indigenous, local, tribal or clan courts have also sentenced persons to death. Furthermore, it has been reported that trials have taken place where the defendant has had inadequate legal representation, representation provided too late to provide adequate legal defence, or no representation at all. The Special Rapporteur has expressed concern that trials have failed to conform to international standards of fairness in one or more of these respects in the following countries and territories: Afghanistan, China (at least prior to the reform of its Criminal Procedure in 1997), Palestine, Rwanda, Saudi Arabia and Yemen.[45] It is widely accepted that legal aid provisions, and therefore the standard of legal defence available in capital cases, is inadequate in many of the Caribbean States that retain the death penalty as well as in parts of the United States of America.[46]

104. All of the responding countries and territories stated that there had been no instances where persons were executed without or outside judicial process. This cannot be taken to be the situation in the world at large, as testified to by the Special Rapporteur. During the period 1994-1998, a dreadful catalogue was revealed of extrajudicial executions and disappearances, sometimes on a genocidal scale, in far too many countries of the world.

F. Sixth safeguard

105. Among the 9 retentionist countries that provided information concerning the sixth safeguard, Bahrain, Kazakhstan, Thailand and Turkey stated that they provide for a mandatory appeal to a higher court whenever a death sentence is imposed on questions of law, procedure, fact and severity of penalty. This right could be exercised in Japan, right up to the Supreme Court, but it was not mandatory to provide for an appeal. In the period 1994-1998, 133 appeals against the death penalty were allowed in Thailand, 5 in Japan, and 1 in Bahrain; no statistics were supplied by the other countries. The replies from Lebanon and Togo indicated that persons sentenced to death had an automatic right of appeal on grounds of law and procedure only. Appeals, as in Japan, were not mandatory: in other words, the appeals court would not consider the case if the prisoner did not exercise his or her right to appeal, or withdrew the appeal. Barbados replied that there was a right of appeal to a court of higher jurisdiction but this was neither automatic nor mandatory. In practice, final appeals are heard by the Judicial Committee of the Privy Council in London. In the Comoros, where capital cases are tried at a Special Court of Assize, there are no provisions for appeal because the Court of Cassation was not operating, apparently because no judges had yet been appointed by the National Assembly. In 1998, the Government of the Islamic Republic of Iran stated that anyone sentenced to

death had the right to appeal to a court of higher jurisdiction, including the Supreme Court, but that the sentence would be carried out (a) if no protest or appeal had been made within the legal time limit of 30 days, (b) if the verdict were confirmed by the Supreme Court or (c) the request for appeal had been rejected or the appeal had been rejected in a final judgement (see E/CN.4/1999/52/Add.1, sect. I).

106. It appears from the concern expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions and by the Human Rights Committee, that military or security courts operate in some countries without granting the full rights of appeal in capital cases that would be available to those convicted in ordinary criminal courts. This is said to have been the case during the survey period in the Central African Republic, Iraq, Nigeria and Sierra Leone.[47] Non-governmental organizations have expressed similar concerns about several other countries.

107. The responding retentionist countries and territories all stated that there was a mandatory waiting period between the time that a person was sentenced to death and the time of the imposition of the death penalty so that there would be adequate time to prepare the case for appeal, with legal assistance provided. No information on the length of the waiting period was asked for or received, except from Japan which stated that 14 days was allowed.

108. Reports relating to several other countries and territories indicate that, despite the existence of formal appeal procedures, persons have been executed within days of their conviction. This suggests that the procedural protections required to ensure an exhaustive appeals process were not in place. The speed at which reported executions have followed some convictions in a number of countries has aroused the concern of non-governmental organizations. During the period under review, there were many reports of executions taking place in China soon after the trial. The new Criminal Law of 1997 of China has, however, made it mandatory for all death sentences, except for those that, according to law, should be decided by the Supreme People's Court and submitted to it for verification and approval.

G. Seventh safeguard

109. The retentionist countries and territories that responded to the questionnaire stated that, during the period under review, all persons sentenced to death had the right to seek a pardon. In Bahrain, Barbados, Kazakhstan, Lebanon and Thailand, they had the right to seek a commutation or reprieve of the sentence, but not in the Comoros and Togo (where no death sentences were actually passed). In its response, Turkey stated that the right to seek pardon was limited by the President's power to remit all or part of the sentence on grounds of chronic illness, disability or old age. During the period 1994-1998, 133 prisoners in Thailand sought a pardon (including commutation of the sentence), and 50 were granted. In addition, 75 prisoners under sentence of death benefited from an amnesty granted by the King in 1996. The Comoros granted commutation of sentence to 2 of the 4 prisoners sentenced to death. In Barbados, 2 of the 15 persons convicted of murder had their death sentence commuted to life imprisonment; a further 11 were ordered to be retried after an appeal to the Judicial Committee of the Privy Council in London (the other 2 died in prison). No pardons or commutations were granted by His Highness the Amir of Bahrain. In its reply, Japan stated that no prisoners had sought a pardon or a reprieve and the only one who had sought commutation of sentence did not have it granted. Statistics were not available for either Kazakhstan or Turkey.

110. There are little data available from other countries and territories on the extent to which powers to pardon, commute or reprieve are exercised. In some countries, however, it is clear that they are very rarely used in favour of the condemned prisoner. For example, in the United States of America, only 6 persons under sentence of death were granted a commutation of their sentence during the period 1994-1998.[48] In the State of Texas, for example, the single commutation recommended by the Pardons Board to the Governor in 1998 was the first in 17 years.[49] It has also been reported that clemency has rarely been granted in Indonesia (E/CN.4/1996/4 and Corr.1, para. 244) and that the commutation of a death sentence by the President of Singapore in 1998 was only the fifth to be granted in 35 years.[50]

111. In countries where Islamic law prevails, the system of Diya operates in place of commutation. The relatives of the victim are given the choice between execution and reprieve of the offender, with or without receiving compensation. It would be helpful if such countries were to furnish statistical information on the extent to which Diya is accepted in lieu of execution.

H. Eighth safeguard

112. Japan stated that its law did not prohibit a person being executed "while in the middle of pardon proceedings". Several retentionist Caribbean countries have argued that the length of time taken for appeals to be heard and deliberated on by the Human Rights Committee and the Inter-American Commission on Human Rights has been excessive: in effect, barring them from enforcing the death penalty. This is because the decision of the Judicial Committee of the Privy Council in the case of *Pratt and Morgan versus Attorney General of Jamaica* (2 A.C. 1, 1994) held that it would constitute inhuman or degrading punishment or other treatment to prolong the period of time spent under the threat of execution beyond five years.

113. For this reason, in May 1998, Trinidad and Tobago withdrew its accession to the Optional Protocol to the International Covenant on Civil and Political Rights as well as the American Convention on Human Rights. On the same day, it acceded again to the International Covenant with reservations to the effect that the Human Rights Committee should not be competent to receive and consider communications relating to any prisoner who was under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any manner connected therewith.[51] The Human Rights Committee held in the case of Rawle Kennedy, an alleged victim of a human rights violation connected with the death penalty in Trinidad and Tobago, that it could not accept a reservation which singled out a certain group of individuals for lesser protection than that which was enjoyed by the rest of the population, and that this constituted a discrimination which ran counter to some of the basic principles embodied in the Covenant and its Protocols; for this reason the reservation could not be deemed compatible with the object and purpose of the Optional Protocol (CPR/C/67/D/845/1999).

114. Nevertheless, Trinidad and Tobago carried out an execution in July 1999 while the prisoner's petition was still pending before the Inter-American Commission on Human Rights.[52] Similarly, early in 2000, an adult male was executed in the Bahamas despite the fact that a petition was pending before the same body. While Jamaica continues to recognize the competence of the Inter-American Commission on Human Rights, it has unilaterally set a time limit of six months for the Commission to consider appeals against the death sentence once all domestic avenues of appeal and commutation have been exhausted. (See also para. 69 above.)

115. These developments clearly raise critical questions for the implementation of a safeguard that is intended to ensure that all possibilities of appeal and reconsideration, national and international, should be pursued to a final decision before capital punishment is enforced.

I. Ninth safeguard

116. The method of execution in 3 retentionist reporting countries was hanging (Barbados, Japan and Lebanon), and in 3 others (Bahrain, Comoros and Thailand), shooting by firing squad. Kazakhstan, Togo and Turkey provided no information. According to the Government of Thailand's web site, the Interior Ministry has agreed that executions should in future be carried out by lethal injection and has passed the issue on to a Government committee to draft a bill. In both the Comoros and Lebanon, at least one execution in the period 1994-1998 was carried out in public. According to the reply from Lebanon, owing to the horrific nature of the crime, public execution was used as a deterrent. Despite this, when asked whether the procedure for imposing the death penalty was carried out so as to inflict the minimum possible suffering on the sentenced person, Lebanon replied in the affirmative. By contrast, neither Thailand nor the Comoros, where executions are by shooting, made this claim.

117. According to other reports, executions in public or executions broadcast on television have taken place during the period under review in at least 18 countries or territories. Such executions have been condemned by the Human Rights Committee as incompatible with human dignity (CCPR/C/79/Add.65, para. 16). In several countries, members of the public have been involved in carrying out the executions, mostly by stoning. Reports of public rallies in China, where persons convicted of capital offences were paraded and humiliated prior to execution, continued to come from Amnesty International during 1998.[53]

118. International norms have been developing on the question of the so-called "death row phenomenon". As mentioned in paragraph 112 above, the Judicial Committee of the Privy Council has established five years as the maximum period for which a person should be held under sentence of death. During the period under review, however, several countries executed prisoners after much

longer periods. The average time spent on death row of prisoners executed in the United States of America in the period 1994-1998 was 10 years and nine months.[54] Fifteen years on death row was not regarded by a Federal Court of Appeals in 1998 as a situation that even began to approach a constitutional violation of cruel and unusual punishment prohibited by the Eighth Amendment.[55] In Japan, which stated that the procedure was carried out so as to inflict the minimum possible suffering on the sentenced person, it appears common for executions to take place at least a decade after conviction. One person was reported to have been executed in 1997, 28 years after conviction. There were also reports of prisoners being detained for long periods under sentence of death in Ghana and Indonesia. The suffering of prisoners kept, often in very restricted circumstances and under conditions of mortal uncertainty, seems prima facie to violate the spirit of the ninth safeguard.

119. The questionnaire for the sixth survey did not include items concerning the conditions under which persons sentenced to death are detained, and did not enquire into the length of time persons remained under sentence of death prior to execution. In view of Economic and Social Council resolution 1996/15, consideration would be given to investigating these questions when planning the seventh quinquennial survey of the Secretary-General.

VI. Information and research

120. Governments, retentionist and abolitionist alike, were requested to complete the final section of the questionnaire. This dealt with a number of issues concerning knowledge of developments connected with the international debate on the use of the death penalty, the promotion and value of research, the raising of public awareness of the issue, and the extent of technical cooperation on matters relating to capital punishment. Eleven of the 45 countries did not respond to any questions in this section, including one of the retentionist States, Kazakhstan, which stated that such questions were not part of the responsibilities of the Ministry of the Interior.

121. Twenty-seven countries stated that, during the survey period 1994-1998, they had made efforts to keep abreast of the international debate on the death penalty and/or followed the work of United Nations bodies on the subject. They included 7 of the retentionist countries (Bahrain, Barbados, Japan, Myanmar, Thailand, Togo and Turkey) but not the Comoros or Lebanon. Nevertheless, the Comoros did report that it kept track of developments and actions in other countries regarding the question of the use of the death penalty.

122. Thirteen countries stated that government or other efforts had been made to increase the availability of information and raise awareness of the use of the death penalty; these countries were Armenia, Bahrain, Barbados, Belgium, Brazil, Iceland, Italy, Japan, Lithuania (by means of seminars), Mozambique, Poland, Spain and Thailand. The reply from Belgium specifically pointed to the influence of an academic article on the death penalty in the journal *Panopticon*.[56] Thailand's efforts include a Government web site which contains both information about, and discussion of, the use of capital punishment. Armenia, Barbados, Italy and Mozambique stated that national campaigns had been launched in their countries to raise public awareness of the issues involved.

123. Only Mozambique and Thailand reported that their countries had received technical cooperation, and only Mozambique stated that it had provided technical cooperation on matters concerning the use of the death penalty. Not one State responded affirmatively to the question: "Did your country require technical cooperation in specific areas concerning the use of the death penalty in which United Nations bodies might be of assistance?"

124. Sixteen countries reported that independent or academic research on the question of the use of the death penalty had been carried out during the survey period on a fairly regular basis: Argentina, Armenia, Bahrain, Brazil, Canada, Italy, Japan, Lithuania, Mexico, Myanmar, Peru, Poland, Slovakia, Slovenia, Spain and Togo. Only Italy, Japan and Lithuania indicated that such research had been Government-sponsored. Lithuania stated that the Government had undertaken a year-long project with the assistance of the Council of Europe, entitled "The death penalty in Lithuania: from retentionist public support to abolitionist well-informed opinion", and had sponsored public opinion surveys. These surveys had revealed that public opinion was opposed to abolition, yet it was nevertheless put into effect in 1998. The Japanese response cited public opinion surveys of people aged 20 years or over conducted by the Public Relations Office of the Prime Minister's Office in 1994 and 1999. This showed no trend towards favouring abolition. In 1994, 13.6 per cent had agreed with the statement "the death penalty should be abolished in all cases" and 73.8 per cent that "the death penalty is unavoidable in some cases". In 1999, the figures were 8.8 per cent and 79.3 per cent respectively. Apart

from Lithuania, only Armenia, Slovenia and Spain reported authoritative and conclusive research findings that justified either the abolition or the retention of the death penalty. Armenia gave no details, Slovenia cited a collection of essays in favour of the abolition of the death penalty,[57] and Spain simply reported that the textbooks commonly used in law faculties took the abolitionist line. Of course it very much depends on what is meant by research. It is clear that, apart from some public opinion surveys, what falls under this heading is mostly the kind of gathering together of information that characterizes the present report. This is mainly because most of the countries with the social science research capacity for more sophisticated independent inquiries into the use and effects of capital punishment are already abolitionist. As far as is known, amongst retentionist countries, it is only in the United States of America that such investigations are being conducted at present.[58] There is obviously a need for social scientists in other retentionist States to have made available to them the necessary resources and the access to data required to provide the knowledge base through which policy and practice in relation to the application of the death penalty can be properly assessed.

125. The questionnaire invited Governments to suggest the type of work that might be undertaken at the subregional, regional and international levels to assist States in regard to the question of the use of the death penalty. Fiji replied that research should be undertaken in the Pacific Island region on public opinion. Slovakia suggested that countries should be provided with a list of nations where the death penalty was actually abolished, along with data that demonstrated that abolition does not affect crime rates. Thailand stated that it needed more information about the arguments for and against the death penalty, because of the attitude of the public towards the issue. The Government of Italy invited attention to the fact that Italy had been in the frontline of the debate at the General Assembly and the Commission on Human Rights, pressing for a moratorium on executions as an intermediate goal in the ongoing campaign for abolition. Mexico made a series of suggestions related to its concern about the non-enforcement of article 36 of the Vienna Convention on Consular Relations (see para. 102 above) and its intention to promote the resolutions of the Commission on Human Rights concerning the abolishment of the death penalty. It suggested that the Advisory Opinion of the Inter-American Court of Human Rights on consular assistance should be circulated and that there should be a campaign for the abolition of the death penalty, to be headed by the United Nations High Commissioner for Human Rights. This would involve representations to obtain the commutation of capital sentences and the promotion of internationally recognized safeguards for the protection of the rights of those sentenced to death, through consular channels and the convening of subregional, regional and international seminars. Mexico suggested that States that had received extradition requests should explicitly reserve the right to refuse them if sufficient guarantees that the death penalty would not be imposed were not provided by competent authorities of the requesting States. In contrast, Japan stated that, basically, although it was necessary to refer to the trends and experiences of other countries, after having given careful consideration to national sentiment, the circumstances surrounding the crimes and to criminal policy, it considered that the issue of retention or abolition of the death penalty should be left to the independent decision of each country.

VII. Concluding remarks

126. It must be acknowledged that a relatively small number of States took part in the Secretary-General's sixth survey: less than one quarter of the Members of the United Nations. Only 6 of the 71 States retaining and enforcing capital punishment at the end of the survey period responded to the Secretary-General's inquiry, and only 6 of the 38, which although retaining the death penalty, had not executed a person for at least 10 years. While 61 per cent of abolitionist States responded to the fifth survey, only 39 per cent provided information for the sixth.

127. The report of the Secretary-General on the fifth quinquennial survey concluded that the pace of change in the quinquennium beginning in 1989 had been quite remarkable: 22 countries, far more than in any other five-year period, had abolished the death penalty between 1989 and 1993. To some extent, this was attributable to the formation of many new States, especially after the dissolution of the former Union of Soviet Socialist Republics. It is therefore perhaps all the more remarkable that, in the five years from 1994 to 1998 when fewer new States came into existence, 17 countries abolished capital punishment, and 4 more did so in 1999, a total of 21. Thus, at the advent of the new millennium, the gathering pace of the abolitionist movement has shown no sign of faltering.

128. Moreover, there is evidence that the abolitionist movement is becoming more widespread across the regions of the world. When Professor Norval Morris submitted his

report to the United Nations tracing developments up to 1965, he listed 26 countries and territories which were abolitionist for all offences or for offences during peacetime, plus 2 Australian states, 24 of the 29 states of Mexico, and 9 states of the United States of America.[59] At the end of 1999, there were 85 abolitionist countries and territories with a similar status, not including the 13 abolitionist states of the United States of America. The list of abolitionist countries and territories in the above-mentioned report included only 2 that were outside of Western Europe and Central and South America: Indonesia (which subsequently reinstated the death penalty) and the Netherlands Antilles (part of the Netherlands). By 1999, the States that had embraced abolition had spread not only into Eastern Europe, but also into Africa. Seven African countries are now completely abolitionist and another 14 are abolitionist de facto. While only 1 Asian State has so far completely abolished the death penalty, 5 are now abolitionist de facto. Among the islands of the Pacific, 11 have abolished the death penalty (10 of them for all offences) and a further 5 are abolitionist de facto.

129. Opposition to abolition of the death penalty is currently concentrated mainly in the Middle East and North Africa and the continent of Asia. The Federal Government of the United States of America and 38 of its states, together with the countries of the English-speaking Caribbean, are the only jurisdictions in the Western hemisphere to retain the death penalty.

130. On the other hand, it must be recognized that, during the period 1994-1998, 1 country reintroduced the death penalty (although it did not enforce it). In addition, 8 countries and territories that had appeared to be moving towards abolition by refraining from carrying out executions for at least 10 years reverted to capital punishment. No countries had done this during the five-year period 1989-1993.

131. This is only the second of the quinquennial surveys to have included questions pertaining to safeguards guaranteeing protection of the rights of those facing the death penalty. As regards the first safeguard, the problem identified in the fifth survey still persists, namely, that capital punishment has been retained in the laws of many countries for a wide range of offences, far beyond the crime of murder. The Commission on Human Rights and the Economic and Social Council may wish to consider whether the wording of the first safeguard should be made more specific. The term "most serious crimes", defined as not going "beyond intentional crimes with lethal or extremely grave consequences", is both vague and open to a wide range of interpretations. For example, the first safeguard could be restricted to crimes that result in the death of another person as a direct consequence of a malicious and intended action of another party. As reluctant as many States appear to be to abolish capital punishment completely, there remains considerable scope for reducing the number of offences for which it is applied. States may wish to recall that it was universally affirmed by the General Assembly as long ago as 1977 that, with regard to the protection of the right to life set forth in article 3 of the Universal Declaration of Human Rights,[60] and subsequently in article 6 of the International Covenant on Civil and Political Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment might be imposed, with a view to the desirability of abolishing this punishment in all countries (resolution 2857 (XXVI).

132. The low response rate from retentionist countries also precluded gauging the true extent to which the remaining eight safeguards had been complied with. It is perhaps not surprising that, when Governments are asked whether they do or do not observe a safeguard, they tick the positive response. If questions relating to the enforcement of safeguards are to be included in future quinquennial surveys, experience suggests that more probing questions relating to specific practices will need to be devised. For example, it is worth considering whether more detailed questions could be asked on police regulations and practices to ensure that interviews are conducted and evidence gathered fairly; on the availability of high quality legal representation, including the amount of legal aid made available at all stages of the process; on procedures for the examination of the defendant's mental state; and on conditions of confinement, both pre-trial and post-conviction.

133. The paucity of responses from retentionist countries also meant that very little could be gathered about the actual number of cases in which the death penalty is inflicted and executions carried out in retentionist States throughout the world. Until there is an internationally agreed policy to communicate to the United Nations on a regular basis the full list of crimes for which the death penalty can be imposed, the changes in the law which affect this list from time to time and the number of persons sentenced to death and executed, the full scope of the death penalty and the extent of executions can never be ascertained. Should there be a sufficient number of responses on the part of Governments to the sixth survey,

it would be advisable that a revised, consolidated report of the Secretary-General be prepared for presentation to relevant bodies so as to allow for an integrated analysis of all information received. The Economic and Social Council may wish to consider this matter.

134. Several States that retain the death penalty dispute the claim that the enforcement of capital punishment is a breach of human rights per se. They maintain that it is an essential element in their armoury of punishment to ensure the control of serious crime. They also maintain that it is possible to enforce capital punishment equitably, without discrimination and with respect to legal due process and rights. The extent to which any system of capital punishment meets these objectives and requirements should be the subject of empirical investigation, drawing upon the experience of jurisdictions where the death penalty has been abolished. It is notable therefore that, apart from the United States of America, very little work of this kind has been carried out by independent researchers in retentionist countries. This may be because of a lack of expertise and resources. Consideration might therefore be given, by the appropriate United Nations bodies, to the provision of the kind of technical aid and financial support that such research requires.

135. Armed with such information, States would be in a position to provide much more valuable data in response to the Secretary-General's enquiries and to satisfy themselves and the international community at large that their policies and practices are in tune with their international human rights obligations. It is clearly not satisfactory that so many retentionist States did not reply to the sixth quinquennial survey and, that with a few honourable exceptions, they have failed to reply consistently to the previous five. Some means of ensuring that the Secretary-General is furnished with more complete information from retentionist countries should be a matter for serious consideration.

Notes

[1] The safeguards were approved by the Economic and Social Council in resolution 1984/50 of 25 May 1984, and are contained in the annex to that resolution. In its resolution 1989/64 of 24 May 1989, the Council recommended that Member States take specific additional steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, and, by resolution 1996/15 of 23 July 1996, called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards. (See also annex II to the present report.)

[2] Professor Hood, who served as a consultant to the Centre for preparation of the fifth quinquennial report, is the author of "The death penalty: a world-wide perspective", a report submitted to the Committee on Crime Prevention and Control, published as a special issue of *International Review of Criminal Policy*, vol. 38 (Oxford University Press, 1989). A second, revised edition was issued in 1996.

[3] The Government of Eritrea stated that it was unable to complete the questionnaire because the new penal code had yet to be finalized and passed through the national legislature. It did not indicate whether the new Constitution of the country barred the use of the death penalty.

[4] This does not include 6 small abolitionist countries and territories whose failure to reply to such a detailed questionnaire may be more understandable: Andorra, the Holy See and 4 small island States in the Pacific.

[5] Angola, Bulgaria, Cambodia, Guinea-Bissau, Honduras and South Africa.

[6] Antigua and Barbuda, Bhutan, the Central African Republic, the Congo, Côte d'Ivoire, Dominica, Gabon, the Gambia, Grenada, Mali, Mauritania, Myanmar, Nauru, Papua New Guinea and Swaziland. Both Mali and Myanmar replied to the 1987 survey on safeguards.

[7] Albania (which is on the verge of abolishing the death penalty), Cameroon, China (which responded to the 1987 survey on safeguards and the survey concerning the annual report submitted to the Commission on Human Rights in 1999), the Democratic Republic of the Congo, Equatorial Guinea, Ghana, the Islamic Republic of Iran (which stated in 1998 that the matter should remain within the framework of the Commission on Crime Prevention and Criminal Justice (E/CN.4/1999/52/Add.1, sect. I) but did not reply to the sixth survey), Kenya (which replied to the 1987 survey on safeguards), Lesotho (which also replied to the 1987 survey), Liberia, the Libyan Arab Jamahiriya, Mongolia, Nigeria, Oman, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Somalia, Uganda, Viet Nam, Yemen and Zimbabwe.

[8] Amnesty International, *The Death Penalty Worldwide: Developments in 1998*, index No. ACT 50/04/99 (London, May 1999).

[9] It was already a capital offence to commit such acts in the context of a foreign war.

[10] Council of Europe, *European Treaty Series*, No. 5.

[11] See Organization for Security and Cooperation in Europe, "The death penalty in the OSCE area: a Survey, January 1998-June 1999", Office for Democratic Institutions and Human Rights, Background paper No. 1999/1 (Warsaw, 1999).

[12] See Organization for Security and Cooperation in Europe, op. cit.; Council of Europe, "Compliance with member States commitments" (AS/Inf.(1999)2); and Sergiy Holovatiy, "Abolishing the death penalty in Ukraine: difficulties real or

imagined?", in *The Death Penalty in Europe* (Council of Europe, 1999).

[13] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40*, vol. I (A/50/40); and Organization for Security and Cooperation in Europe, op. cit.

[14] Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Djibouti, Estonia, Georgia, Italy, Lithuania, Mauritius, Nepal, Poland, the Republic of Moldova, South Africa, Spain and the United Kingdom of Great Britain and Northern Ireland.

[15] Turkmenistan, Ukraine and the newly independent East Timor.

[16] Latvia.

[17] Bahrain (4), the Comoros (4), Japan (31), Lebanon (38), Thailand (133) and Turkey (30). Armenia, Barbados, Kazakhstan and Myanmar did not provide figures but other sources, collated by Amnesty International, suggest that at least 12 persons were sentenced to death in Armenia, 2 in Barbados, over 200 in Kazakhstan and 21 in Myanmar during the period 1994-1998. Eritrea and Togo reported no death sentences.

[18] In 1996, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions noted the very high number of judicial executions each year in Turkmenistan in relation to its population of 4.5 million (E/CN.4/1997/60/Add.1, para. 503).

[19] Amnesty International publishes figures on a regular basis showing the number of death sentences imposed throughout the world and the number of executions in the publication *Facts and Figures on the Death Penalty*. Estimates referred to here, for 1994, 1995, 1996, 1997 and 1998, were drawn from Amnesty International, *Death Sentences and Executions in 1994*, index No. ACT 51/01/95; *Death Sentences and Executions in 1995*, index No. ACT 51/01/96; Death Sentences and Executions in 1996, index No. ACT 51/01/97; *Death Sentences and Executions in 1997*, index No. ACT 51/01/98; and *Death Sentences and Executions in 1998*, index No. ACT 51/01/99.

[20] For the International Covenant and Second Optional Protocol thereto, see General Assembly resolutions 2200 A (XXI), annex, and 44/128, annex, respectively.

[21] See Renate Wohlwend, "The efforts of the Parliamentary Assembly of the Council of Europe", in *The Death Penalty: Abolition in Europe* (Council of Europe, 1999), p. 57. See also paragraph 6 of Parliamentary Assembly resolution 1097 (1996).

[22] Council of Europe, *The Death Penalty: Abolition in Europe* (1999).

[23] Several retentionist countries, in their replies to the Commission on Human Rights at its fifty-fourth and fifty-fifth sessions, provided useful statements on the scope of, and procedures relating to, the imposition of the death penalty: Cuba, Lebanon, the Philippines, the Russian Federation, Turkey and the United States of America in 1998, and the Islamic Republic of Iran in 1999. Abolitionist Mexico in 1998 gave details of military offences still subject to the death penalty.

[24] Japan stated that the concept of "ordinary" offences and "special" offences was not clear and that in Japanese law, there was no distinction between the two. It was therefore difficult to answer a question differentiating between the two concepts.

[25] For example, Uzbekistan reduced the number of capital offences from 19 to 13 in 1995, the Russian Federation reduced it from 27 to 5 in 1996 and Tajikistan reduced the number from 44 to 15 in 1998.

[26] See Slawomir M. Redo, *United Nations Position on Drugs Crimes*, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material No. 27 (Tokyo, 1985).

[27] Bahrain, Bangladesh, Brunei Darussalam, China, Egypt, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, the Libyan Arab Jamahiriya (introduced in 1996), Malaysia, Myanmar, Oman, Pakistan, the Philippines, Qatar, the Republic of Korea, Saudi Arabia, Singapore, Sri Lanka, the Sudan, the Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, the United Arab Emirates, Uzbekistan and Viet Nam.

[28] Amnesty International, *Death Penalty News*, index No. ACT 53/03/98 (London, June 1998).

[29] Amnesty International, *Death Penalty News*, index No. ACT 53/01/98 (London, December 1997).

[30] Also *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40*, vol. I (A/53/40), para. 119.

[31] China, Grenada, Guatemala, Pakistan, the Philippines (for kidnap with torture), the United Arab Emirates and Yemen.

[32] See Amnesty International, *Amnesty International Report, 1996* (London, 1996), p. 90.

[33] China, the Democratic Republic of the Congo, Cuba, Ghana, Malaysia, Mali, Nigeria, Singapore, the Sudan, Uganda, Viet Nam and Zambia.

[34] Cameroon, the Democratic Republic of the Congo, China, Iran (Islamic Republic of), the Libyan Arab Jamahiriya, Malaysia, Mali, Singapore, the Sudan, Togo and Viet Nam.

[35] General Assembly resolution 44/25, annex.

[36] Afghanistan, Burundi, Bangladesh, the Democratic Republic of the Congo, India, Iran (Islamic Republic of), Iraq, Malaysia, Morocco, Myanmar, Nigeria (excepting Federal Law), Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates.

[37] An item in *Death Penalty News* stated that, on 24 October 1999, the Tehran newspaper, *Keyhan*, reported that a 17-year-old male and an 18-year-old male had been hanged in the Islamic Republic of Iran for murdering a man and his 16-year-old son (Amnesty International, index No. ACT 53/05/99, December 1999, p. 5). In relation to the execution of a 17-year-old male in Nigeria, see E/CN.4/1998/68, para. 91. For the report of the execution in Pakistan of a male who at the time of the offence was 14 years of age, see

Amnesty International, *Annual Report, 1998* (London, 1999), p. 269.

[38] See Victor L. Streib, "The juvenile death penalty today", at <http://www.lqw.onu.edu/faculty/streib/juvdeath.htm>; and Amnesty International, *USA: Shame in the 21st Century*, index No. AMR 51/189/99 (London, 1999).

[39] See, for example, "*Ramjattan versus Trinidad and Tobago*", *The Times*, 1 April 1999, and "*Campbell versus Trinidad and Tobago*", 21 July 1999 (unreported).

[40] See Death Penalty Information Center, "Mental retardation and the death penalty", at <http://www.essential.org/dpic/dpicmr.html>.

[41] See James L. Stephan and Tracy L. Snell, *Capital Punishment 1994* (Washington, D.C., United States Department of Justice, Bureau of Justice Statistics Bulletin, 1996); see also the Bulletins for 1995, 1996, 1997 and 1998.

[42] See Death Penalty Information Center, "Innocence: freed from death row", at <http://www.essential.org/dpic/Innocentlist.html>.

[43] Amnesty International, *United States of America: Rights for All Fatal Flaws; Innocence and the Death Penalty*, report No. AMR 51/69/98 (London, November 1998).

[44] For Algeria, see E/CN.4/1995/61, paras. 45-48; for the Democratic Republic of the Congo, see E/CN.4/1999/39/Add.1, para. 66; for Egypt, see E/CN.4/1995/61, paras. 119 and 126, and E/CN.4/1998/68/Add.1, paras. 146-153; for Iraq see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40*, vol. I (A/53/40), chap. V, sect. C; for Kuwait, see E/CN.4/1995/61, paras. 202-205, and E/CN.4/1996/4 and Corr.1, para. 288; for Nigeria, see E/CN.4/1996/4 and Corr.1, paras. 338-353, and *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40*, vol. I (A/51/40), para. 42; for Pakistan, see E/CN.4/1998/68/Add.1, para. 303; and for Sierra Leone, see E/CN.4/1999/39/Add.1, para. 216.

[45] For Afghanistan, see E/CN.4/1999/39/Add.1, paras. 4-5, and E/CN.4/1998/68/Add.1, paras. 442-443; for China, see E/CN.4/1997/60/Add.1, para. 103; for Palestine, see E/CN.4/1998/68/Add.1, para. 438; for Rwanda, see E/CN.4/1998/68/Add.1, para. 354, and E/CN.4/1999/39/Add.1, para. 205; for Saudi Arabia, see E/CN.4/1999/39/Add.1, para. 212; and for Yemen, see E/CN.4/1998/68/Add.1, para. 442.

[46] See Roger Hood, *The Death Penalty: A World-wide Perspective* (Oxford University Press, 1990), pp. 107-111.

[47] For the Central African Republic, see E/CN.4/1995/61, para. 86; in relation to Iraq, Nigeria and Sierra Leone, see the source cited in note 40 above.

[48] See National Coalition to Abolish the Death Penalty, "Death penalty profile" (1999 wrap-up)", at <http://www.ncadp.org/stats.html>.

[49] See Amnesty International, *Killing Without Mercy: Clemency Procedures in Texas*, index No. AMR 51/85/99 (London, June 1999), p. 6.

[50] Amnesty International, "News in brief", in *Death Penalty News*, index No. ACT 53/03/98 (London, June 1998), p. 4.

[51] Ministry of Foreign Affairs, Trinidad and Tobago, *Instrument of Accession to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation Excluding the Competence of the Human Rights Committee to Receive and Consider Communications in Relation to the Imposition of the Death Penalty.*

[52] Despite the fact that Trinidad and Tobago had withdrawn its accession to the Inter-American Convention on Human Rights, the appellant had access to the Inter-American Commission on Human Rights by virtue of the membership of Trinidad and Tobago in the Organization of American States.

[53] See Amnesty International, *People's Republic of China: the Death Penalty in 1998*, index No. ASA 17/57/99 (December 1999), pp. 4-5.

[54] Bureau of Justice Statistics, *Capital Punishment* (annually), United States Department of Justice.

[55] *Chambers versus Bowersox*, 157 F. 3d 560, at p. 570 (8th Cir. 1998).

[56] Professor Storme, "De onverminderde actualiteitswaarde von de discussie over de doodstrat" [The undiminished topicality of discussions on the death penalty], *Panopticon*, 1995, p. 365

[57] J. Zlobec (ed.), *Smrtna kazen* [*The Death Penalty*], Cankarjeva zalo ba, Ljubljana, 1989.

[58] See, for example, "How the death penalty works: empirical studies of the modern capital sentencing system", in *Cornell Law Review*, vol. 38, No. 6, September 1998.

[59] United Nations Secretariat, Department of Economic and Social Affairs, *Capital Punishment: Developments 1961-1965*, 1967.

[60] General Assembly resolution 217 A (III).

Annex I

Supplementary data and tables

Table 1
Status of capital punishment in December 1999: countries and territories that were retentionist [a]

Afghanistan	Iran (Islamic Republic of)	Saint Lucia
Algeria	Iraq	Saint Vincent and the Grenadines
Bahamas	Japan	Saudi Arabia
Bahrain	Jordan	Sierra Leone
Bangladesh	Kazakhstan	Singapore
Belarus	Kenya	Somalia
Botswana	Kuwait	Sudan
Burundi	Kyrgyzstan	Syrian Arab Republic
Cameroon	Lebanon	Taiwan Province of China
Chad	Lesotho	Tajikistan
Chile	Liberia	Thailand
China	Libyan Arab Jamahiriya	Trinidad and Tobago
Comoros	Malawi	Tunisia
Cuba	Malaysia	Uganda
Democratic People's Republic of Korea	Mongolia	United Arab Emirates
Democratic Republic of the Congo	Morocco	United Republic of Tanzania
Egypt	Nigeria	United States of America
Equatorial Guinea	Oman	Uzbekistan
Ethiopia	Pakistan	Viet Nam
Ghana	Palestine	Yemen
Guatemala	Philippines	Zambia
Guyana	Republic of Korea	Zimbabwe
India	Russian Federation	
Indonesia	Rwanda	
	Saint Kitts and Nevis	

Note: The above-mentioned countries and territories retain the death penalty for ordinary crimes. Most of them are known to have carried out executions during the past 10 years. In some cases, however, it is difficult to ascertain whether or not executions have in fact been carried out.

[a] Total 71 countries and territories.

Table 2
Status of capital punishment in December 1995: countries and territories that are completely abolitionist[a]

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*
Andorra	1990		1943
Angola	1992		..
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Bolivia	1997	1991	1974
Bulgaria	1998		1989
Cambodia	1989		..
Canada	1998	1976	1962
Cape Verde	1981		1835
Colombia	1910		1909
Costa Rica	1877		..
Croatia	1991		1987
Czech Republic	1990		..
Denmark	1978	1933	1950
Djibouti	1995		1977[b]
Dominican Republic	1966		..
East Timor	1999		1999[b]
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1987		..
Greece	1994	1993	1972
Guinea-Bissau	1993		1986
Haiti	1987		1972
Holy See	1969		..

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*
Honduras	1956		1940
Hungary	1990		1988
Iceland	1928		1830
Ireland	1990		1954
Italy	1994	1947	1947
Kiribati	1979		1979[b]
Liechtenstein	1987		1785
Lithuania	1998		1995
Luxembourg	1979		1949
Marshall Islands	1986		1986[b]
Mauritius	1995		1987
Micronesia (Federated States of)	1986		1986[b]
Monaco	1962		1847
Mozambique	1990		1986
Namibia	1990		1988
Nepal	1997	1990	1979
Netherlands	1982	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Norway	1979	1905	1948
Palau	1994		1994[b]
Panama	..		1903
Paraguay	1992		1928
Poland	1997		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1989		1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975[b]
Seychelles	1993		1976[b]
Slovakia	1990		..
Slovenia	1989		1957

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*
Solomon Islands	1978	1966	1966[c]
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944
The former Yugoslav Republic of Macedonia	1991		..
Turkmenistan	1999		1997
Tuvalu	1976		1976[b]
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965	1964
(Northern Ireland)	1998	1973	..
Uruguay	1907		..
Vanuatu	1980		Ind. 1980
Venezuela	1863		..

Note: Two dots (..) indicate that information is not available.

[a] Total 74 countries and territories.

[b] Year in which independence was achieved. No executions have taken place since that time. The date of the last execution prior to independence is not available.

[c] Before that year.

Table 3
Status of capital punishment in December 1999: countries that are abolitionist for ordinary crimes only[a]

Country	*Date of abolition for ordinary crimes*	*Date of last execution*
Argentina	1984	1916
Bosnia and Herzegovina	1997	..
Brazil	1979	1855
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1999	1964
Israel	1954	1962
Latvia	1999	1996
Malta	1971	1943
Mexico	..	1930
Peru	1979	1979

Note: Two dots (..) indicate that information is not available.
[a] Total 11 countries.

Table 4
Status of capital punishment in December 1999: countries and territories that can be considered abolitionist de facto[a]

Country or territory	*Date of last execution*
Albania[b]	1995
Antigua and Barbuda	1989
Armenia[c]	1991
Barbados	1984
Belize	1986
Benin	1989
Bhutan	1964
Brunei Darussalam	1957
Burkino Faso	1989
Central African Republic	..
Congo	1982
Côte d'Ivoire	1960
Dominica	1986
Eritrea[d]	1989
Gabon	1989
Gambia	1981
Grenada	1978
Guinea	1984
Jamaica	1988
Lao People's Democratic Republic	1989
Madagascar	1958
Maldives	1952
Mali	1980
Mauritania	1989

Country or territory	*Date of last execution*
Myanmar	1989
Nauru	1968[e]
Niger	1976
Papua New Guinea	1950
Qatar	1989
Samoa	1962
Senegal	1967
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982
Turkey	1984
Yugoslavia	1989

Note: Two dots (..) indicate that information is not available.

[a] Total 38 countries and territories.

[b] Although the last execution took place in 1995, in June 1996, the President of the Parliament announced, in a signed declaration in preparation for its entry into the Council of Europe, that Albania would put into place a moratorium on executions until such time as the death penalty was abolished.

[c] Although the last execution took place in 1991, in its response to the questionnaire, Armenia classified itself as abolitionist de facto on the grounds that a Bill to abolish the death penalty was before Parliament in 1999.

[d] Eritrea became independent in 1993.

[e] Year in which independence was achieved. No executions have taken place since that time. The date of the last execution prior to independence is not available.

Table 5
Countries and territories that have abolished capital punishment since 1985[a]

		Offences for which capital punishment was abolished	
Countryor territory (in chronological order)	*Year*	*All offences*	*Ordinary offences*
Australia	1985	×	
Germany	1987	×	
Haiti	1987	×	
Liechtenstein	1987	×	
Cambodia	1989	×	
New Zealand	1989	×	
Romania	1989	×	
Slovenia	1989	×	
Andorra	1990	×	
Czech Republic	1990	×	
Hungary	1990	×	
Ireland	1990	×	
Mozambique	1990	×	
Namibia	1990	×	
Sao Tome and Principe	1990	×	
Slovakia	1990	×	
Croatia	1991	×	
The former Yugoslav Republic of Macedonia	1991	×	
Angola	1992	×	
Paraguay	1992	×	
Switzerland	1992	×	
Guinea-Bissau	1993	×	
Seychelles	1993	×	
Greece	1994	×	

Country or territory (in chronological order)	Year	Offences for which capital punishment was abolished	
		All offences	Ordinary offences
Italy	1994	×	
Djibouti	1995	×	
Mauritius	1995	×	
Republic of Moldova	1995	×	
Spain	1995	×	
Belgium	1996	×	
Bolivia	1997	×	
Bosnia and Herzegovina	1997		×
Georgia	1997	×	
Nepal	1997	×	
Poland	1997	×	
South Africa	1997	×	
Azerbaijan	1998	×	
Bulgaria	1998	×	
Canada	1998	×	
Estonia	1998	×	
Lithuania	1998	×	
United Kingdom of Great Britain and Northern Ireland	1998	×	
East Timor	1999	×	
Latvia	1999		×
Turkmenistan	1999	×	
Ukraine	1999	×	

[a] Total 46 countries and territories.

Table 6

Countries that have signed or ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Second Optional Protocol to the International Convenant on Civil and Policital Rights and/or the Protocol to the American Convention on Human Rights

Country (by region)	*Signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Signed Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Ratified Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Signed Protocol to the American Convention on Human Rights*	*Ratified Protocol to the American Convention on Human Rights*
Asia and the Pacific						
Australia			X	X (1990)		
Nepal			X	X (1998)		
New Zealand			X	X (1990)		
Seychelles			X	X (1994)		
Latin America and the Caribbean						
Brazil					X (1994)	X (1994)
Colombia			X	X (1997)		
Costa Rica			X	X (1998)	X (1991)	X (1998)
Ecuador			X	X (1993)	X (1990)	X (1998)
Honduras			X			
Nicaragua			X		X (1990)	
Panama			X	X (1993)	X (1990)	X
Paraguay					X (1999)	
Uruguay			X	X	X	X (1994)
Venezuela			X	X	X	X
Eastern Europe						
Albania	X					
Azerbaijan			X			
Bosnia and Herzegovina		X				
Bulgaria	X (1999)		X (1999)	X (1999)		
Croatia	X (1996)	X (1997)	X	X (1995)		
Czech Republic	X (1991)	X (1992)				
Estonia	X (1993)	X (1998)				
Georgia	X (1999)		X (1999)	X (1999)		
Hungary	X (1990)	X (1992)	X	X (1994)		
Latvia	X (1998)	X (1999)				
Lithuania	X (1999)	X (1999)				
Poland	X (1999)					

Country (by region)	*Signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Signed Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Ratified Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Signed Protocol to the American Convention on Human Rights*	*Ratified Protocol to the American Convention on Human Rights*
Republic of Moldova	X (1996)	X (1997)				
Romania	X (1993)	X (1994)	X	X (1991)		
Russian Federation	X (1997)					
Slovakia	X (1991)	X (1992)	X (1998)	X (1999)		
Slovenia	X (1993)	X (1994)	X	X (1994)		
The former Yugoslav Republic of Macedonia	X (1996)	X (1997)	X	X (1995)		
Ukraine	X (1997)	X (2000)				
Africa						
Djibouti			X	X		
Mozambique			X	X (1993)		
Namibia			X	X (1994)		
Western Europe						
Andorra	X (1996)	X (1996)				
Austria	X (1983)	X (1984)	X	X (1993)		
Belgium	X (1983)	X (1998)	X	X (1998)		
Cyprus	X (1999)	X (1999)	X	X (1999)		
Denmark	X (1983)	X (1983)	X	X (1994)		
Finland	X (1989)	X (1990)	X	X (1991)		
France	X (1983)	X (1986)				
Germany	X (1983)	X (1989)	X	X (1992)		
Greece	X (1983)	X (1998)	X	X (1997)		
Iceland	X (1985)	X (1987)	X	X (1991)		
Ireland	X (1994)	X (1994)	X	X (1993)		
Italy	X (1983)	X (1988)	X	X (1995)		
Liechtenstein	X (1990)	X (1990)	X	X (1998)		
Luxembourg	X (1983)	X (1985)	X	X (1992)		
Malta	X (1991)	X (1991)	X	X (1994)		
Netherlands	X (1983)	X (1986)	X	X (1991)		
Norway	X (1983)	X (1988)	X	X (1991)		
Portugal	X (1983)	X (1986)	X	X (1990)		
San Marino	X (1989)	X (1989)				
Spain	X (1983)	X (1985)	X	X (1991)[a]		
Sweden	X (1983)	X (1984)	X	X (1990)		
Switzerland	X (1983)	X (1987)	X	X (1994)		

Country (by region)	*Signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*	*Signed Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Ratified Second Optional Protocol to the International Convenant on Civil and Policital Rights*	*Signed Protocol to the American Convention on Human Rights*	*Ratified Protocol to the American Convention on Human Rights*
United Kingdom of Great Britain and Northern Ireland	X (1999)	X (1999)	X (1999)	X (1999)		

[a] Withdrew reservation in 1997.

Annex II

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. The safeguards guaranteeing protection of the rights of those facing the death penalty, as contained in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, are as follows.

(a) In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(b) Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(c) Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane;

(d) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts;

(e) Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings;

(f) Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory;

(g) Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment;

(h) Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence;

(i) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

2. Further to the above-mentioned safeguards, the Council, in its resolution 1989/64 of 24 May 1989, recommended that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence,

including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

3. Further, the Council in its resolution 1996/15 of 23 July 1996:

(a) Noted that, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries had abolished the death penalty and others had followed a policy reducing the number of capital offences, and had declared that they had not sentenced any offender to that penalty, while still others had retained it and a few had reintroduced it;

(b) Called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it was stated that capital punishment might be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(c) Encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary,[a] the Basic Principles on the Role of Lawyers,[b] the Guidelines on the Role of Prosecutors,[c] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[d] and the Standard Minimum Rules for the Treatment of Prisoners;[e]

(d) Also encouraged Member States in which the death penalty had not been abolished to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;

(e) Called upon Member States in which the death penalty might be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

(f) Also called upon Member States in which the death penalty might be carried out to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question;

(g) Urged Member States in which the death penalty might be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

Notes

[a] *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

[b] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

[c] Ibid., sect. C.26.

[d] General Assembly resolution 43/173, annex.

[e] Economic and Social Council resolution 663 (XXIV), annex.